116-A

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

No. ~~851~~. 82

WILLIAM H. LEE, PLAINTIFF IN ERROR,

vs.

ENOS JOHNSON.

IN ERROR TO THE CIRCUIT COURT OF EMMET COUNTY, STATE OF MICHIGAN.

FILED OCTOBER 10, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 351.

WILLIAM H. LEE, PLAINTIFF IN ERROR,

vs.

ENOS JOHNSON.

IN ERROR TO THE CIRCUIT COURT OF EMMET COUNTY, STATE OF MICHIGAN.

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1 (Copy.)

We, the undersigned solicitors and attorneys, doing business as a copartnership at the city of Grand Rapids, Michigan, do hereby appoint the county clerk of Emmet county, in said State, our agent, upon whom may be served all notices and papers in suits in which we are interested as attorneys or solicitors, pending, or which may be commenced or defended by us in the circuit court in chancery for said county of Emmet.

This appointment be made in order to comply with the rule of practice of said court in such cases.

Grand Rapids, Mich., May 1st, 1879.

WHITE & DODGE.

1½ [Endorsed:] Appointment of agent. White & Dodge, of Grand Rapids, Mich. Received & filed May 22nd, 1879. Wm. R. Bowser, register.

2 STATE OF MICHIGAN:

To the Circuit Court for Emmet County. In Chancery.

Your orator, Enos Johnson, a citizen of the State of Michigan, now residing in the county of Kent, in said State, complaining, respectfully showeth unto this honorable court that for nearly twenty years prior to the 17th day of April, A. D. 1875, he had been a resident of said county of Kent, and being then desirous of availing himself of the benefits of a law of the United States commonly known as the homestead law, made search for a suitable selection of land in said State, which, by virtue of the provisions of said law, he could enter upon and secure as a homestead for himself and family, he then being a citizen of the United States, and the head of a family, and more than twenty-one years of age; that a short time prior to said date he ascertained that the following described lands, to wit, the west fractional half of northwest fractional quarter, and the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter of section number seven (7), in township number thirty-five (35) north of range five (5) west, in the said county of Emmet, were unappropriated lands of the United States, subject to entry, and said — under the said law at the United States land office at Traverse City, in said State, and that for the
3 purpose and in good faith of acquiring said lands for actual settlement and cultivation, and as a homestead for himself and family, your orator went on to said lands a short time prior to said date and cleared off a small parcel thereof, and erected for his own use a dwelling-house thereon, and on the said date went to the United States land office, located at said Traverse City, and in strict accordance with the requirements of said law and for the purpose aforesaid made application for said lands in writing and in accordance with the said law and the rules and regulations prescribed by the officers of the United States having such matters in charge, and there "entered" the same, paying to the United States register or receiver at said land office all such sums of money as were then

by him required in order to secure said lands to your orator for the purposes aforesaid; that thereupon the said register issued and delivered to your orator his certificate or duplicate so-called, signed by him, and showing what your orator had done in the premises, and vesting in your orator an equitable estate in said land, subject only to be defeated in case of some default or action of your orator provided for in said law, which certificate has never been surrendered by your orator, but is now his property, and is now on file in the Department of the Interior, at Washington, in charge of the Secretary of the Interior, but to a
4 certified copy thereof or the original paper, if your orator can obtain the same, your orator, when they are produced in evidence, will for certainty refer to; that having so "entered" said land said register made the proper entries concerning the same, upon the books & maps kept in his office as also required by said law, showing your orator's interest in said land, to which books & maps, when introduced in evidence, your orator will also refer; that at the time your orator so "entered" or bought said lands, his wife was in extremely feeble health, and living at their home in Kent county aforesaid, near the city of Grand Rapids, and could not be removed to said lands without seriously endangering her life, and your orator was compelled to be with her and assist in caring for her, but in order to secure said land and maintain his claims thereto, and to guard against reverting of the same to the Government of the United States, as in certain certain events is provided for in said law, your orator employed one Robert Stauffer, his son-in-law, to move on to said lands with his family and there remain in the employ of your orator, cultivating and improving said lands, until your orator's wife might so improve in health as to admit of your orator leaving her or taking her with him in his personal actual settlement on said lands; that in accordance with such employ-
5 ment, and very shortly after the said 17th day of April, said Stauffer, as such employee of your orator, did, with his family, actually settle upon said lands, and has lived in the dwelling-house thereon ever since, until about the 10th day of April, 1879, as the agent and hired man of your orator, and during that time with means furnished by your orator, continued to improve said lands until your orator, beside his own work hereinafter referred to, has expended in such improvements about four hundred dollars, and said lands have become a valuable property, being worth as your orator alleges at least two thousand dollars. And your orator here states that said Stauffer never had any interest in said lands, nor in any parcel of the same, nor did your orator enter the same for him, but all that said Stauffer did thereon was in behalf of and at the expense of your orator, and as his tenant & employee. And your orator further shows that on the 5th day of October, A. D. 1875, he personally went on to said land and there remained, living with his son-in-law and working in the making of said improvements until the 25th day of December next following, when in consequence of his wife's continued severe sickness he was compelled to leave and return to her in Kent county aforesaid, but in the spring of 1876 her health

appeared to improve, so that finally on the 15th day of June of that year he settled upon said lands with her, and there made his home,
6 intending the same to be a permanent settlement and homestead for himself and family; that he continued to reside upon said lands, and worked and improved the same until in the latter part of September of that year, when his wife's health again began rapidly to fail, and in consequence thereof, and in order to be near their former medical adviser & physician, your orator took her back to Kent county aforesaid, but himself returned on to said land and continued to live thereon until about the 1st of January, 1877, when, in consequence of the increasing sickness of his wife, he returned to her and remained, taking care of her until about the first of May next following, when he again returned to said land and worked on the same until in October of that year, at which time his wife's continued sickness necessitated a return to Kent county to take care of her; that since that time he has frequently, and for and during such periods of time as he could be absent from his wife, lived on said lands, at no time abandoning them, and has never been even absent therefrom for a period of six months, and never for any length of time without a fixed and settled determination to return to the same and there establish his permanent home; that at great expense he always kept his said son-in-law on said lands, cultivating and improving the same, as the agent, tenant, and employee of your orator, and your orator insists that none of said lands ever reverted
7 to the United States for any cause named in said homestead law; that, in truth, ever since he "entered" the said lands, and the employment of said Stauffer thereon, your orator maintained his possession as aforesaid until about the 10th day of April, 1879, when said Stauffer, in consequence of the bad conduct of the defendant hereinafter named and his family, removed from said land; but your orator has always up to that date been legally in the actual possession of said land in compliance with said law, according to the true tenor and spirit thereof. And now your orator further shows unto the court that on or about the 19th day of June, A. D. 1876, and when your orator and his wife were actually residing upon said lands, and there making their home, one William H. Lee, of said Emmet county, and the defendant to this bill, went to Traverse City aforesaid, and there made complaint, & showing, according to the requirement of the law aforesaid in cases of abandonment of lands "entered" as homestead, setting forth and falsely and with intent, your orator alleges, of defrauding your orator out of said lands and to obtain the same for himself, that your orator had abandoned said lands for a period of more than six months prior to that date, by means whereof he procured the register of said land office to advertise said lands as so claimed to be abandoned, and notified your orator to appear at said land office on the day named in said advertisement or notice and show cause why his
8 claim to said lands should not be cancelled and said land revert as aforesaid. And your orator here expressly alleges that at the time said Lee made said complaint and showing and procured said notice to be made, he personally knew that your orator

and his wife were then actual residents of said lands, and that the improvements aforesaid, and to the extent and value aforesaid, had been made, and that at no time had said lands been vacated since said Stauffer first moved thereon, and that said Stauffer had been acting as the agent, tenant, and employee of your orator in his residence upon said lands, and in the cultivation and improvement of the same.

And your orator further shows unto the court that upon the day named for that purpose in said advertisement or notice he appeared at said land office with divers witnesses in his behalf, and said Lee appeared as contestant of your orator's claims to said land; and thereupon and afterward "proofs" or rather testimony was taken on both sides by — before said register, & the said register, whose name was Seth C. Moffatt, did himself reduce such testimony to writing. And your orator there made proof before said register of all the facts,

9 hereinbefore stated, that had occurred up to that time concerning the actual settlement upon said land- and their cultivation and improvement by him as aforesaid, and of the facts concerning the continued sickness of his wife, and the reasons why he had not personally resided upon said lands all the time after he "entered" the same. That your orator's own testimony was also then taken, in writing, in his own behalf, in which he substantially made the same statements as are herein set forth, showing that your orator had never abandoned said lands, and the nature, extent, & value of his improvements thereon; all which testimony was afterward, as your orator is informed, and believes to be true, made up in form, & by him, the said register, returned to the Commissioner of the General Land Office at Washington, D. C., & submitted to him for his decision as to the rights of your orator, &c., &c., &c.

And your orator further shows that he is informed, and believes it to be true, and so alleges it to be a fact, that afterward the said Commissioner decided said controversy in favor of your orator, from which decision the said defendant, Lee, took an appeal to the Hon. Secretary of the Interior at Washington, who subsequently reversed said decision and decided that your orator had abandoned said

10 land-, and that the same had reverted to the United States, and were again liable to entry & purchase by said Lee, or any other party, and again threw said lands upon the market, and the same were purchased by said Lee, as your orator is informed & believes, at the price of one & $\frac{25}{100}$ dollars per acre, and afterward, to wit, on or about the thirteenth day of July, 1878, a United States patent of said lands was issued and delivered to said Lee, he having filed his duplicate receipt for the same in the said General Land Office, by means whereof the said Lee is now clothed with the legal title to said lands, and is now in possession of the same, & claiming to be the owner thereof.

And your orator further shows unto the court that he has now in his possession an autograph letter from the Hon. Carl Schurz, the Secretary of Interior, who reversed the said Commissioner's decision and decided the said controversy adverse to your orator, in which

letter the said Secretary states that he based his said reversal and decision upon two grounds, viz:

First. That in the reported testimony of your orator taken before the said register at Traverse City, as the same appeared before him as remitted to said Commissioner, and with said appeal
11 brought before him, your orator is or was reported to have testified and said testimony was written & expressed that when your orator entered said lands and took his duplicate receipt for the same he intended said lands for his said son-in-law, and not as a personal homestead for himself; and

Second. That while personally off of said lands and in Kent county aforesaid, and at an election held in the spring of the year 1876, your orator voted in the town of Gaines, where he was then staying.

But your orator shows that each and both said statements so reported as having been made by him in the giving of his testimony before said register are and were absolutely false. That in the giving of his testimony at that time and place he did not testify nor in fact was any such testimony taken as expressed by him of that kind or in words to that effect; that he did not then testify that he intended said lands for his son-in-law, or that he had voted as said reported testimony expressed; and your orator positively alleges that the testimony so reported to said Commissioner & Secretary as given by your orator did in fact make it to appear that your orator had sworne as alleged by said Secretary, whereas in truth
12 and fact your orator never gave such testimony, or any testimony to that effect, and that each and both and all statements of that character inserted in his said reported testimony were absolutely false, and were either written up afterward or falsely and fraudulently interpolated into his true testimony by the said register, or by some person unknown to your orator, with intent thereby to cheat and defraud your orator, & by means thereof deprive him of his just & equitable estate in said lands. And your orator alleges that the said frauduient and false statements so put into his testimony was done at & by the instigation of him, the said defendant, & for the very purpose of thereby & by force of the supposed legal effect of such statements as coming from the mouth of your orator to defeat his rights to said land, & thereby said Lee procure the same. And your orator further alleges that by means of said false and fraudulent interpolations so put into his said testimony by & at the instigation or with the knowledge of said defendant, he, the said defendant, did procure the cancellation of the sale of said lands to your orator, and the throwing of them back upon the market, and the purchase of the same and his patent
13 thereof; and your orator insists that said defendant procured his title to said lands by means of said fraud, and also by means thereof deprived your orator of the same; that both said statements upon which the said Secretary based his said decision were false; that your orator in fact "entered" said lands in good faith, and under said homestead law, & for actual settlement and cultivation by himself, & as and for the purpose of securing the

same as a homestead for himself and his own family, and his said son-in-law never had any interest in the same; and no person was ever authorized to state that your orator "intended said lands for his son-in-law," nor did your orator ever state or testify that he so intended. And your orator insists that he is still equitably entitled to said lands, and that said decision adverse to his rights was in fact secured by the defendant by means of the said false and fraudulent statement being inserted by some means or person into the testimony of your orator, which was returned & reported to said Commissioner and brought to said Secretary by means of the appeal aforesaid; and your orator further shows that, having by means of the said Secretary's said letter ascertained the grounds upon which he based his said decision, he made strenuous efforts to get a rehearing of said controversy and sent to said Secretary a large number of affidavist
14 showing by persons who were present at the examination at Traverse City before said register that your orator never testified as was reported to said Secretary, & that each & both said purporting statements upon which he based his said decision were false and fraudulent interpolations, and upon said affidavits moved the said Secretary for an order granting your orator a rehearing or new trial of said controversy and the taking of testimony again; but said Secretary refused to grant such an order, insisting that such statements were reported to him through the regular channels and by proper subordinate officers, and he should consider himself bound to treat them as true, and remained firm in refusing to disturb the matter; and thereby your orator was deprived of his legal rights and of a just opportunity to show the fraud which had been perpetrated upon him and necessitated his appearance in this court and complaint in the premises.

And your orator further shows that said Lee bought said lands and accepted his patent for the same with full knowledge of all your orator's rights thereto, and of all the facts in relation thereto hereinbefore stated, and while the said Stauffer, for your ora-
15 tor, and your orator himself was in the full, open, and actual possession of said lands; and your orator insists that in taking the legal title to said lands the said Lee took the same subject to your orator's equitable estate therein and thereto, and that upon payment to him of the amount of money he paid to said Government for said lands, less the cost of your orator in this behalf in this suit, the said Lee ought to be compelled to grant and convey said lands to your orator free & clear of all incumbrances; and your orator is willing to, and hereby offers to, pay to said Lee, when the amount shall be ascertained, the full price he paid for said lands, with such interest thereon as shall seem just and equitable to the court.

And your orator, by friends in his behalf, has requested said Lee to receive the amount of money he paid for said lands, and convey the same to your orator, as in equity he ought to do. But now so it is. May it please the court that the said Lee absolutely refuses to comply with such reasonable requests, and insists that your orator has no rights to said lands or to any portion of the same; but fraudulently contriving

how to cheat and defraud your orator out of his right to said land
16 and confederating with divers other persons at present unknown to your orator, but whose names when discovered your orator prays he may insert herein, with apt and proper words to charge them, &c., pretends that your orator did abandon said lands for a period of more than six months at a time after he so "entered" them, and that your orator did not enter said lands in good faith for a homestead for himself, but intended the same for his said son-in-law, and that your orator never resided upon said lands or had or took legal, actual possession of the same; and that your orator did testify in fact, as heretofore stated, before said register, and that he, the said Lee, is the just, legal, and equitable owner in fee simple of said lands without any rights of your orator therein or thereto.

Wherefore your orator charges the contrary thereof to be the truth, and that each and every the said pretences are false, and are made and persisted in by the said defendant for the purpose
17 of cheating and defrauding your orator out of his just right to said land. To the end, therefore, and forasmuch as your orator is remediless at the common law and is only reliable in a court of equity, that the defendant may full, true, direct, and proper answer to the premises, and that as fully & particularly as though he was carefully interrogated concerning the same (but without oath, answer on oath being hereby expressly waived), and that it may be ordered, adjudged, and decreed by this honorable court that your orator is the just, true, and equitable owner of each and every the said parcels of land, and that he never legally or equitably lost his rights to or abandoned the same, and that the same never reverted to the Government of the United States after your orator so entered the same; that the defendant Lee procurred his title to & patent for said lands in fraud of your orator, and that upon payment to him by your orator of whatever sum of money he paid the said Government for said lands, less your orator's reasonable and taxable costs in this behalf expended, with such interest as to the court shall seem proper, he, the said
18 William H. Lee, be ordered and adjudged to execute and deliver unto your orator a good & sufficent deed of conveyance of said lands, & every parcel thereof free and clear of all incumbrances, and granting and conveying to your orator the fee simple of said lands and the title thereto which he received from the said Government, and that he thereupon let your orator into the full, exclusive, perfect, and peaceable possession of said lands, and of the whole of the same, and of the tenements thereon, and that it be also adjudged that such granting and conveyance be made within a reasonable time named after such order and decree is made, and in default thereof your orator be adjudged at liberty to record such decrees in the office of the register of deeds of said Emmet county, and that the same have effect to vest in your orator & his assigns the absolute estate in fee simple in said lands wholly freed from any and all claims or estates of said Lee therein or

thereto; and that your orator may have such other & further relief in the premises as shall be agreeable to equity.

May it please the court to grant unto your orator the writ
19 of subpœna issuing out of & under the seal of this court & directed to the said William H. Lee, commanding him by a certain day & under a certain penalty to be inserted therein to be and appear in this court and answer the premises and to stand to and abide by such order and decree therein as to the court shall seem agreeable to equity, and your orator will ever pray, &c.

(Signed) ENOS JOHNSON.

WHITE & DODGE,
Compl't's Solic's, Grand Rapids, Mich.

[Endorsed:] Circuit court, Emmet county. In chancery. Enos Johnson, compl't *vs.* William H. Lee, def't. Bill received & filed May 22nd, 1879. (Signed) Wm. R. Bowser, register. White & Dodge, compl's sol'rs.

20 *Subpœna.*

STATE OF MICHIGAN, *to wit:*

The Circuit Court for the County of Emmet. In Chancery.

In the name of the People of the State of Michigan to William H. Lee, Greeting:

You are hereby commanded to appear before the circuit court for the county of Emmet, in chancery, at the court-house, in the village of Little Traverse, on Tuesday, the eleventh day of June, A. D. 1879, then and there to answer unto a bill of complaint exhibited against you as defendant by Enos Johnson as complainant; and this you shall in nowise omit, under penalty of one thousand dollars.

Witness the Hon. Reuben Hatch, Jr., circuit judge for the county of Emmet, at Little Traverse, the twenty-second day of May, in the year one thousand eight hundred and seventy-nine.

[SEAL.] WILLIAM R. BOWSER, *Register.*

WHITE & DODGE,
Solicitors for Complainant.

21 STATE OF MICHIGAN, *Emmet County,* } *ss:*

I hereby certify and return that on the 23d day of May, A. D. 1879, I served the within subpœna personally on William H. Lee, by delivering to the said defendant a true copy of the said subpœna, inscribed copy, & subscribed White & Dodge, complainant's solicitors, and at the same time I showed the said defendant the original subpœna, with the seal of the court impressed thereon, as by law I am commanded.

(Sig-ed) J. N. BRADLEY,
Under Sheriff.

My fees: Service------ 75 cts.
Travel ------ 10 cts.
Copies ------ 25 "

Total ----- 1 50

Paid.

[Endorsed:] No. —. Emmet county. In chancery. Enos Johnson, compl't, *vs.* William H. Lee, def't. Subpœna. Filed May 23d, 1879. Wm. R. Bowser, register. White & Dodge, compl't's solicitors.

22 STATE OF MICHIGAN:

In the Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Complainant, *vs.* WILLIAM H. LEE, Defendant.

On motion of Pailthorp & Newberry, solicitors for said defendant, William H. Lee, it is ordered that the appearance of said defendant be, and the same is hereby, entered.

And on like motion it is further ordered that the complainants serve upon the said solicitors a copy of -is bill of complaint filed in this cause, within fifteen days after service upon him or his solicitors of notice of this order, or in default thereof the said bill is dismissed, with costs.

To WHITE & DODGE, *Solicitors for Complainants.*

Please take notice that the foregoing is a true copy of an order this day entered in the above-entitled cause.

Dated June 17th, 1879.

PAILTHORP & NEWBERRY,
Solicitors for Defendant, Petoskey, Mich.

23 [Endorsed:] No.—. The circuit court for the county of Emmet. In chancery. Enos Johnson. complainant, *vs.* William H. Lee, defendant. Order for copy of bill and notice. Received, filed, and entered in book of common orders No. 1, at page 225, and filed this 17th day of June, 1879. Wm. R. Bowser, register. Pailthorp & Newberry, solicitors for defendant.

24 *The Answer of said Defendant, Wm. H. Lee, to the Complainant's Bill of Complaint.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Complainant, *vs.* WILLIAM H. LEE, Defendant.

This defendant, saving and reserving to himself all benefit of exceptions that may be taken to the many errors, uncertainties, and insufficiencies in the said bill contained, for answer thereto, or unto so much thereof as he is advised it is material for him to answer, answering, says: He admits that the complainant is a resident of

the county of Kent & State of Michigan; that he is a citizen of the United States, the head of a family, & more than twenty-one years of age. He admits that at the time named in said bill complainant was entitled to all of the rights and privileges of the homestead law of the United States. He, further answering, admits that on or about the 17th day of April, A. D. 1875, complainant "located" and entered the lands described in said bill under and by virtue of the provisions of the homestead laws of the United States, as set out in his bill of complaint, but he admits that he took said land for the purposes alleged therein. He, further answering, admits that
25 all the proceedings in regard to the "location" and entry of said lands were regular & apparently in accordance with the requirements of the homestead laws of the United States. That the complaint made the proper affidavit and paid all such sums of money as were required in order to secure his right to enter said land as a homestead; but this defendant denies that the complainant was ever vested with an equitable estate in said lands, as set forth in his bill of complaint, and avers that the complainant never had any estate in said lands of any name or nature, and that the only interest the complainant ever had in the same was a contingent one, and alleges that said interest has been defeated by the complainant's own negligence and his failure to comply with the requirements of the law regulating homesteads. He, further answering, admits that the register of the land office, at Traverse City, made the proper entries in the books and maps kept in said office as required by law. This defendant denies that complainant's wife was sick, or that complainant was compelled to stay at home on account of his wife or any other member of his family, but is informed & believes & avers it to be true that complainant's wife was in good health during the entire period of her alleged sickness, & that the complainant's allegations in regard to the same were made up after said complainant was advertised
26 for abandoning his homestead as an excuse and reason for his not complying with said homestead law. He, further answering, admits that one Robert Stauffer, a son-in-law of complainant, on or about the first day of May, A. D. 1875, moved upon said land, & that he lived thereon during the time named in said bill; but he denies that the complainant ever resided upon said lands, or that he ever had possession of the same in any manner whatever. He denies that the lands are worth two thousand dollars, and alleges that the same are not worth more than twelve hundred dollars. He denies that the complainant ever laid out & expended in improving the said lands four hundred dollars, or any other sum, or that the improvements made by complainant were worth $400.00, or any other sum. He, further answering, denies that the said Stauffer resided upon said lands as the agent, tenant, or employee of the complainant, and avers that the said Stauffer was a co-conspirator with said complainant, with the object in view of fraudu-ently acquiring title to said lands mentioned in said complainant's bill of complaint; and he further avers that all of the complainant's allegations & statements in regard to the same are false & without foundation. Defendant, further answering, denies the allegations

that complainant never abandoned his homestead, & was never absent therefrom for a period of six months, and never for any length of time without a fixed and settled determination to return to the same and thereon establish his permanent home; and that
27 none of said lands ever reverted to the United States for any cause named in said homestead laws, & that he has maintained possession of the same until about the 10th day of April, 1879, & that he has always up to that date been legally in the actual possession of said lands, in compliance with the said laws, according to the true tenor & spirit thereof; & this defendant avers that each and every of said allegations, & all of complainant's statements in regard to the same, are false in every particular. He, further answering, admits that at or about the time this defendant went to Traverse City and made complaint & showing according to the requirements of the law in cases of abandonment of lands entered as homesteads, and that the said lands were advertised in accordance with such statement & showing, & that complainant was notified to appear on a day named in such notice at said office to show cause why his claim to said lands should not be cancelled and said lands revert to the Government; but this defendant denies that his said statement & showing were false, and done with intent to defraud the complainant or any one else, &, on the contrary, alleges that every and all of his statements in regard to the same were true. This defendant, further answering, expressly denies the allegation "that at the time said Lee made said complaint and showing, and procured said advertisement and notice to be made, he personally knew that your orator and his wife were then
28 actually residents of said lands, and that the improvements aforesaid, & to the extent & value aforesaid, had been made, & that at no time had said lands been vacant since said Stauffer moved thereon, & that the said Stauffer had been acting as the agent, tenant, & employee of your orator in his residence upon said lands, and in the cultivation and improvement of the same. And this defendant avers that each and all the said allegations & statements of the complainant relative to the same are untrue, and, on the contrary, alleges that the said complainant never resided upon said lands at the time the same were advertised, or at any other time, & that the lands were always vacant as regards complainant's residence upon the same, and that he never made any improvements at that time or prior to that time upon said land, and that said Stauffer was not acting as the agent, tenant, or employee of complainant at that time, nor was any other person acting as the agent, tenant, or employee of said complainant in making improvements upon said land, and that he never had an agent, tenant, or employee upon said land, cultivating and improving the same. He, further answering, admits that at the time named in said notice and advertisement the complainant appeared at said land office at Traverse City with divers witnesses in his behalf, and that this defendant appeared as a contestant of complainant's claims to said land, & that thereupon
29 and afterward testimony was taken on both sides by and

before said register, whose name was Seth C. Moffatt, who reduced such testimony to writing, & that the complainant's testimony was taken in writing in his own behalf; and this defendant avers that the said complainant's testimony was read over to him, the said complainant, before his signing the same, by said register, and that complainant admitted that the said testimony was correct, and signed the same with full knowledge and understanding of the same, and that the same was reported to the Commissioner of the Land Office, at Washington, D. C., exactly as the same was given, and admitted to be correct, and signed by said complainant. Defendant, further answering, admits that all the said testimony was afterward sent to the General Land Office, at Washington, D. C., and submitted to the Commissioner of the Land Office for his decision thereon as to the rights of complainant. This defendant denies that complainant made proof of all the facts as alleged in his bill of complaint that had occurred up to that time concerning the actual settlement upon said lands and the cultivation and improvement by him, and of the facts concerning the continued sickness of his wife and the reasons why he had not personally resided upon said land all of the time aftered he entered the same. He, further answering,
30 admits that the said Commissioner decided the controversy in favor of the complainant, and that this defendant appealed from his said decision to the Hon. Secretary of the Interior, at Washington, D. C., aforesaid, who subsequently reversed said decision, and decided that complainant had abandoned said lands, and that the same had reverted to the United States, and were again liable to entry under the homestead laws of the United States by this defendant, or any other party, and again threw said lands upon the market, and that the same were afterwards entered by this defendant as a homestead, and occupied by him as such for a period of six months or upwards, and was then purchased by said defendant at one dollar and twenty-five cents per acre, and that on or about the 30th day of July, A. D. 1878, he obtained a United States patent for the same, and that he is now clothed with the legal title, and also the equitable title to the same, and is in the possession thereof, and claims to be the owner of the said land. This defendant denies that the said Secretary of the Interior based his decision upon the two grounds named in complainant's bill, or that there was any change or interpolation made in the complainant's testimony, or in any other testimony taken before said register at Traverse City, or that there was any fraud in the taking and reporting the same to the Commissioner of the Land Office,
31 or to any other person, and he avers that all of complainant's allegations in regard to the same are untrue and without foundation. This defendant denies all fraud or collusion, or any attempts to cheat or defraud complainant, and alleges that all of his acts in regard to the same have been open and fair, and within the means and knowledge of complainant, and that the complainant has had every right, and been informed of all the proceedings on the part of the defendant, as required by law; and that complainant had a fair and impartial hear-

ing before the register of the land office at Traverse City, and that the controversy has been fully investigated and passed upon and decided by the Secretary of the Interior, and the rights of the complainant has been fully determined before a tribunal of competent jurisdiction. This defendant denies that the complainant made showing and effort to get a rehearing of said controversy, or that he sent to said Secretary a large number of affidavits, showing by persons who were present at said examination at Traverse City, before said register, that complainant never testified as reported, & this defendant expressly avers that the said complainant did testify as the same was reported to the Commissioner of the General Land Office, at Washington, D. C. He further admits that he bought said lands and received his patent for the same, but denies all knowledge of any rights of
32 complainant to the same, and expressly alleges that complainant had no rights to to the same of any name or nature whatever at the time the defendant located the same, and that he has never had any interest in the same since then. He denies that complainant, by himself, his friends, or any other person, offered to pay back to this defendant the amount he paid for said lands, or that said complainant ever offered to pay any other sum back to this defendant, or ever requested this defendant to convey said lands to complainant, or to any other person; and said defendant, further answering, says that he denies all fraud and all confederacy of every name and nature, as set out in complainant's bill. He denies that complainant has any right to or interest in any of the lands and premises aforesaid, but that the same belongs absolutely to this defendant; and this said defendant submits that said complainant has not set out in his said bill a statement of facts entitling him to any relief from a court of equity, even though no denial of them had been made in said defendant's answer; and the said defendant therefore hopes that he shall have the same benefits of this defence as if he had demurred to said bill; & said defendant denies that said complainant should have the relief asked for in his said bill, or any part thereof, farther than this, that any matter or thing which
33 is contained in said bill & which is not herein and hereby fully answered, denied, confessed, omitted, traversed, or denied, is true according to the best knowledge and belief of this defendant; all of which matter and things this defendant is ready to aver, maintain, and prove as this hon. court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

(Signed) WILLIAM H. LEE,
(Signed) PAILTHORP & NEWBERRY,
Solicitors for Defendant and of Counsel.

[Endorsed:] State of Michigan, Emmet county. The circuit court for the county of Emmet. In chancery. Enos Johnson, complainant, *vs.* William H. Lee, defendant. Defendant's answer to the complainant's bill of complaint. Filed the 6th day of August, A. D. 1879. Wm. R. Bowser, register. Pailthorp & Newberry, solicitors for fendant and of counsel.

34 & 35 *Copy of Calendar.*

Parties: Enos Johnson complainant, *vs.* William H. Lee, defendant.
Action: ——.
Complainant's solicitor-: White & Dodge.
Defendant's solicitor-: Pailthorp & Newberry and E. M. Pratt.

May	22, 1879.	Bill of complainant filed.
"	23, "	Order for subpœna entered.
"	" "	Subpœna issued returnable June 11th, 1879.
"	23, "	" returned and filed. (Personal service.)
June	17, "	Order for copy of bill and notice filed and entered.
August	6, "	Defendant's answer to bill of complaint filed.
Sept.	16, "	Replication filed.
March	8, 1880.	Stipulation of attorneys filed.
May	11, "	Subpœnas for witnesses for complainant issued.
"	" "	" returned. (Personal service.)
"	12, "	Affidavit (complainant's) for continuance filed.
July	22, "	Stipulations as regards U. S. land officers filed.
Sept.	8, "	Decree entered and filed.
Oct.	18, "	Claim of appeal filed.
"	18, "	Bond in appeal filed.
January	20, 1881.	Order received by telegraph to send returns to Lansing.

36 *Copy of Order for Subpœna.*

STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Complainant, *vs.* WILLIAM H. LEE, Defendant.

On reading and filing bill of complaint in this cause, on motion of White & Dodge, solicitors for the complainant, it is ordered that a subpœna be issued out of and under the seal of said court directed to the said defendant, agreeable to the prayer of said bill.

WILLIAM R. BOWSER,
Register in Chancery.

WHITE & DODGE,
Complainant's Solicitors.

Copy of Order for "Copy of Bill and Notice."

STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery. Entered June 17th, 1879.

ENOS JOHNSON, Complainant, *vs.* WILLIAM H. LEE, Defendant.

On motion of Pailthorp & Newberry, solicitors for said defendant, William H. Lee, it is ordered that the appearance of said de-

37 fendant, William H. Lee, be, and the same is hereby, entered, and on like motion it is further ordered that the complainant serve upon the said solicitors a copy of his bill of complaint, filed in this cause within fifteen days after the service upon him or his solicitors of notice of this order or in default thereof that said bill be dismissed with costs.

WILLIAM R. BOWSER,
Register in Chancery.

PAILTHORP & NEWBERRY,
Solicitors for Defendant.

38 *Bond, General.*

Know all men by these presents, that we, Enos Johnson, of Gaines, in the county of Kent and State of Michigan, as principal, and John M. Hanna, of the same place, and John Leatherman, of the same place, as sureties, are held and firmly bound unto William H. Lee, of Little Traverse, in the county of Emmet, in the State of Michigan, in the sum of two hundred dollars, lawful money of the United States of America, to be paid to the said William H. Lee, or to his certain attorney, heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind —, our heirs, executors and administrators, and each and every of them, firmly by these presents.

Sealed with our seals. Dated the twenty-fifth day of September, one thousand eight hundred and eighty.

The condition of this obligation is such that whereas the above-named Enos Johnson, having appealed to the supreme court of the State of Michigan from the decree of the circuit court for the county of Emmet, in chancery, rendered in a cause wherein the said Enos Johnson is complainant and the said William H. Lee is defendant, and bearing date the thirteenth day of May, A. D. 1880, and
39 entered with the register of said court on the eighth day of September, A. D. 1880. Now, therefore, if the said Enos Johnson shall perform or satisfy the decree or final order of the said supreme court in the cause, and pay all costs which may be awarded to the said appellee in the matter of appeal aforesaid, then this obligation shall become and be null and void, but otherwise shall remain and be of full force and effect.

(Signed) ENOS JOHNSON. [L. S.]
" JOHN M. HANNA. [L. S.]
" JOHN LEATHERMAN. [L. S.]

STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON *vs.* WILLIAM H. LEE.

I hereby approve of the within bond, and of the sufficiency of the sureties therein named.

Dated at Little Traverse this 18th day of October, A. D. 1880.

[SEAL.] (Signed) GEORGE W. STONEBURNER,
Circuit Court Commissioner in and for Emmet County, Michigan.

[Endorsed:] Bond. Filed Oct. 18th, 1880. Wm. R. Bowser, clerk.

40 STATE OF MICHIGAN, } ss:
The Circuit Court for the County of Emmet, }

To Job Scott, Isaac Stauffer, in the name of the people of the State of Michigan:

You are commanded that, laying aside all and singular your business and excuses, you be and appear before the circuit court for the county of Emmet, at the circuit court room in said county, on eleventh day of May, 1880, at 10 o'clock in the forenoon, to testify and give evidence in a certain cause now pending in said court, then and there to be tried, between Enos Johnson, plaintiff, and William H. Lee, defendant, in the part of the defendant; and for a failure to attend you will be deemed guilty of a contempt of said court, and will be responsible to the aggrieved party for the loss, hindrance, and all other damages sustained hereby, and will forfeit to the said party the sum of fifty dollars in addition thereto.

Witness the Hon. Reuben Hatch, judge of said circuit court, at the circuit court room, in the village of Little Traverse, in said county, on the eleventh day of May, one thousand eight hundred and eighty.

(Signed) WILLIAM R. BOWSER, *Register.*

41 STATE OF MICHIGAN, } ss:
County of Emmet, }

I hereby certify and return that on the 6th day of May, A. D. 1880, in Little Traverse township, I served the within subpœna on Job Scott, the witness named therein, personally, by then and there showing to the said Job Scott the said subpœna, with the seal impressed thereon, and delivering to him a true copy thereof, and paying to ———, at the same time and place aforesaid, the sum of —— dollars and —— cents, for fees for traveling to the court named in said subpœna, and for attendance thereat. My fees, $1.45.

(Signed) JOHN SMITH,
Dep. Sheriff of said County.

I do hereby certify & return that on the 7th day of May, A. D. 1880, in the township of Bear Creek, in Emmet Co., Mich., I served the within subpœna on Isaac Stauffer, the witness within named therein, personally, by them & there showing to the said Isaac Stauffer the said subpœna, with seal impressed thereon, and delivering to him a true copy thereof, and paying to him, Isaac Stauffer, at the same time & place aforesaid, the sum of two dollars & thirty cents, for his fees for traveling to the court named in said subpœna, and for his attendance thereat. My fees, $1.45.

(Signed) A. W. ALDRICH, *Sheriff.*

[Endorsed:] No. —. State of Michigan, the circuit court for the county of Emmet. Enos Johnson *vs.* Wm. H. Lee. Subpœna. Filed May 11th, 1880. (Signed) Wm. R. Bowser, clerk.

42 STATE OF MICHIGAN :

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

In this cause the complainant, not having been able to procure the testimony of one Edward Stevenson, register of the United States land office at Reed City, Michigan, & the use and evidence of the original papers and testimony taken by and before Seth C. Moffatt, Esq., the former register of said office, when the same was located at Traverse City, Michigan, on the 19th day of September, 1876, on a contest then had before said Moffatt between the parties to this cause of and concerning the land in question in this cause. Therefore it is hereby stipulated and agreed by and between the solicitors for said parties that at the final hearing of this cause the said complainant may introduce in evidence the said original papers, and testimony and copies of the same, with authentication of the same by said Stevenson or by said Moffatt, and with like effect read the same in evidence as though the same had been introduced and received in evidence at the taking of the testimony in this cause before the appointed commissioner, Ezra C. Barnum, Esq., who took the testimony in
43 said cause, and that such copies of said original papers may be filed in lieu of such original papers, and thereafter stand and be a part of the evidence in said cause in all proceedings in this cause at said final hearing, and any proceedings thereafter had and herein, and that when said papers are introduced the said defendant's solicitors shall then have the privilege and right to cross-examine the said Stevenson or Moffatt on any matters concerning which they may either of them then testify concerning said papers, with the privilege of introducing said Moffatt for the purpose of testifying in any respect concerning said original papers.

WHITE & DODGE,
Compl't's Sol's.
PAILTHORP & NEWBERRY,
Def't's Sol's, &
E. S. PRATT,
Of Counsel.

It is further stipulated & agreed between the above-named solicitors that the cause in the above stipulation entitled shall be brought on for the final hearing named in said stipulation on Thursday, the 22nd day of July, 1880, at ten o'clock a. m., at chambers, before the circuit judge of said circuit court, at Traverse City, Michigan.

WHITE & DODGE,
Compl't's Sol's.
PAILTHORP & NEWBERRY,
Def't's Sol's, &
E. S. PRATT,
Of Counsel.

[Endorsed:] The circuit court for Emmet county. In chancery.

Enos Johnson, compl't, *vs.* William H. Lee, df't. Stipulations. Filed this 22nd day of July, A. D. 1880. Reuben Hatch, circuit judge.

44 STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

COUNTY OF KENT, *ss:*

Enos Johnson, being duly sworn, deposes and says: That he is the above-named complainant; that he has stated all of the facts of the case so far as they are known to him to Alexander W. Dodge, his counsel herein, & who is one of the members of the firm of White & Dodge, who are the solicitors of this deponent in this cause; that said Dodge has advised him that he has a good and meritorious cause for equitable — in this cause the same as he has sought for by his bill of complaint herein, and that the said Dodge, by the procurement of deponent, made personal investigation into the facts of this case, and possesses even greater knowledge of them than your deponent possesses, as your deponent verily believes from the statements of said Dodge to him; that it was on counsel and advice of said Dodge that deponent commenced said suit; that said
45 Dodge drafted the bill of complaint herein; that said Dodge, to the best of the knowledge, information, and belief of this deponent, has had the sole and exclusive care, oversight, and control of this suit on the part of this deponent; that this deponent has had no counsel with said George H. White (the other member of said firm) either before or since the commencement of this suit about it; that deponent has until now expected Dodge to take the entire and sole charge of this suit, and had relied upon his doing so, especially with regard to the direct and cross-examination of witnesses in this cause at the time of the taking of testimony herein and the hearing of this cause; that deponent knows said Dodge to possess great experience and much reputation in chancery suits, and that he has the entire confidence of this deponent; that said White was a stranger to this deponent until about the time of the commencement of this suit, and that the acquaintance between them is as yet quite limited, and that he very much prefers that said Dodge should conduct this cause; that during almost the whole time of the acquaintance of deponent with said White said White has been sick, and apparently unable to attend to business, and to the best of the observation, information, and knowledge of deponent has not been attending to business to any considerable extent, so deponent had no opportunity to consult with him; that he has not informed the said White of the facts of this case,
46 and believes that he cannot do it fully; that the papers that would partly enable him to do it are not at hand (in deponent's possession); that there are facts in regard to the matter which said Dodge has obtained by inquiry and investigation of an important nature, and affecting the final result of this cause, as he is informed by

said Dodge, which information he verily believes, and of which deponent has only a general knowledge, and not any particular knowledge. Deponent further says that said Dodge lives in the city of Ionia, and the said White in the city of Grand Rapids; that the deponent has been and now is very anxious to have the testimony taken in this cause and the same heard as quickly as possible, consistent with a fair presentation of the merits hereof to this court; and for that purpose having heard that on account of sickness in his family, said Dodge would be unable to attend on the examination of witnesses herein and the hearing hereof, went to Ionia on last Saturday to see said Dodge and have him, if possible, attend personally; that he then learned that said Dodge could not go on account of the sickness in his family; that the father of said Dodge is a very aged man, and is apparently very sick; that deponent saw him; that the daughter of said Dodge is reported to be very sick, and deponent verily believes that she is; that he found said Dodge in such a state of anxiety on account of the illness afflicting his family that deponent
47 saw that it would not be very well for him to go while in that frame of mind to attend a case so intricate in its details as this one is; but deponent urged him very strongly to go, but found that he would not promise to because of such sickness; that deponent tried to get him to go to Grand Rapids and see said White and endeavor to instruct him in the matter, so that said White might attend to it; that he declined to do so, both on account of the sickness of his family and for the reason, as he said, that the state of health of his partner had been and was such (as he believed) as rendered it unsafe for him to attempt, at present, to attend to attend to a matter of so much difficulty and intricacy as this case is, and become fully acquainted with it in all of its details; deponent further says that he has a large number of witnesses situated at different points, and some of them at a considerable distance from the place of holding this court, and that the bringing of them into this court to testify, without the suit was tried and their testimony taken, would be very expensive, and he can very poorly afford to incur such expense. Deponent further says that he cannot safely proceed to this trial without the assistance of the said Dodge at this present term; that said application for continuance is not made for the purpose of delay only, but in order that he may have the testimony to sustain the allegations of his said bill properly presented,
48 and a fair and full hearing had upon the merits, so that he may have the just and equitable relief to which he is entitled to in this suit.

Deponent further says that he verily believes that he will be able to produce his witnesses herein and have this cause heard upon the merits at the next term of this court.

(Signed) ENOS JOHNSON.

Subscribed and sworn to before me, this 5th day of May, A. D. 1878.

(Signed) SAMUEL A. WRIGHT,
Notary Public in & for Kent Co., Mich.

STATE OF MICHIGAN:

The Circuit Court for the County of Emmet.

ENOS JOHNSON *vs.* WILLIAM H. LEE.

COUNTY OF KENT, *ss:*

George H. White, being duly sworn, deposes and says: That he is one of the solicitors for complainant; that he has read the two affidavits hereto annexed, and so far as they state about his knowledge of this suit, and acquaintance with it and his health, he knows them to be true. Deponent further says that he is not acquainted with the facts of this case, and that at the present time his health is such that he ought not to take the managament of an in-
49 tricate case on hand; that nearly all the time since last August the health of deponent has been such that it was unsafe for him to devote much attention to business; that although his health is improving very greatly, it has not yet become so that he may safely devote his time to business of much intricacy, involving close mental application.

(Signed) GEORGE H. WHITE.

Sworn and subscribed to before me, this 11th day of May, A. D. 1880.

(Signed) SAMUEL. A. WRIGHT,
Notary Public, Kent Co., Mich.

49½ *The Replication of Enos Johnson, Complainant, to the Answer of William H. Lee.*

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

This repliant, saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer for replication thereunto, say that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law, to be answered unto; and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by his said bill he has already prayed.

WHITE & DODGE,
Solicitors for Complainant.

49¾ [Endorsed:] The circuit court for the county of Emmet. In chancery. Enos Johnson, complainant, *vs.* William *R. Bowser*, defendant. Replication. Filed this 16th day of September,

1879. W. R. Bowser, register. White & Dodge, solicitor- for complainant.

50 STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

COUNTY OF IONIA, *ss:*

Alex. W. Dodge, being duly sworn, says: That he is one of the members of the firm of White & Dodge, the solicitors of record for the complainant in the above-entitled cause; that this deponent drafted the bill of complaint in said cause, and thus far has had the sole and exclusive management of the same, and is, as such solicitor, the only one sufficiently acquainted with the facts alleged in said bill and with the order of proofs to be used therein in behalf of the complainant to take charge of the examination of the witnesses to be sworn therein, and that in the prosecution and conduct of said cause said complainant has hitherto, as deponent verily believes, altogether relied upon the services of this deponent; that this deponent resides at the city of Ionia, and that he cannot with justice to his family leave them and go to attend upon the taking of proofs and hearing of said cause at the date now set for the same, to wit, May 12th, 1880; that this deponent's daughter is very sick, and has been for a long time confined to her bed, requiring the services of a physician; that deponent's wife is in feeble health, and his father, a
51 very old man, aged eighty-two years, is confined to his bed most of the time by sickness, and nearly helpless; that said sickness requires this deponent to be at his home daily to attend upon the said sick members of his family, and he cannot with due regard to their condition be absent from home for any length of time, and especially for so long a time as will be required to go to attend upon the taking of proofs and hearing of said cause; and that by reason of the large amount of sickness in this deponent's family a continuance of said cause is, as he believes, absolutely necessary to the interests of the complainant; that this deponent has carefully examined the facts in said cause, as stated to him by said complainant, and as alleged in said bill, and after hearing such statement, which deponent verily believes to be true, he has advised, and also believes it to be true, that said complainant has a good and equitable case upon the merits thereof, and is entitled to the decree in said bill prayed for. And further saith not.

(Signed) ALEX. W. DODGE.

Subscribed and sworn to before me, May 4th, 1880.

(Signed) BENJ. F. SPENCER,
Justice of the Peace in & for Ionia Co., Mich.

52 STATE OF MICHIGAN:

The Circuit Court for Emmet County. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

COUNTY OF IONIA, *ss:*

Caleb H. Hammond, being duly sworn, says: That he is a practising physician, residing at the city of Ionia, in said county of Ionia; that he is now the family physician of Alex. W. Dodge, Esq., who resides in said city, and whose affidavit is hereto annexed; that this deponent has heard said affidavit of Alex. W. Dodge read, so far as it states the condition of his family and of the sickness of members of the same, and knows that said affidavit is true in that regard; that for a long time this deponent has been treating professionally the sick daughter of the said Alex. W. Dodge, and is also well acquainted with the state of his family, as requiring his personal attendance at home, and verily believes that said Dodge ought not be absent from home any length of time; that his father, who lives with said Dodge, is a very aged man, almost entirely helpless with rheumatism, and requires aid to be helped from his bed; that Mrs. Dodge is in feeble health, and said Dodge's daughter requires, by reason of present severe sickness, almost constant
53 attention, and that there is no other person member of that family who can take his place in his absence and attend upon said sick members of his family, as deponent verily believes.

(Signed) C. H. HAMMOND, *M. D.*

Subscribed and sworn to before me, May 4th, 1880.

(Signed) BENJ. F. SPENCER,
Justice of the Peace, Ionia Co., Mich.

[Endorsed:] Emmet county circuit court. In chancery. Enos Johnson, compl't, *vs.* William H. Lee, def't. Affidavits for continuance. Filed May 12th, 1880. Wm. R. Bowser, register. White & Dodge, compl't's solicitors.

54 STATE OF MICHIGAN:

The Circuit Court for Emmet County. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

In this cause it is hereby agreed by and between the parties thereto that the above-entitled cause, now noticed for testimony in open court, at the March term of said court, continued until the adjourned term of said court, on May 12th, 1880, at which date the case is to be brought on for testimony and proofs therein in open court, unless further continued upon cause shown by either party.

Dated March 5th, 1880.

(Signed) WHITE & DODGE, *Compl't's Sol's.*
" PAILTHORP & NEWBERRY,
Def't's Sol's, &
" E. S. PRATT, *Of Counsel.*

55 [Endorsed:] Circuit court Emmet county. In chancery. Enos Johnson, compl't, *vs.* William H. Lee, def't. Stipulation. Filed March 8th, 1880. Wm. R. Bowser, register.

56 STATE OF MICHIGAN:

The Circuit Court for Emmet County. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

Testimony of witnesses taken in the above-entitled cause, and by virtue of an order and stipulation, and of the circuit court, in chancery, before me, the undersigned, notary public in and for said county, at the village of Petoskey, begining on the 22d day of June, A. D. 1880, at ten o'clock a. m. of that day.

PHILANDER B. WRIGHT, a witness produced on the part and behalf of the complainant in said cause, being by me first duly sworn, testifies as follows, that is to say:

Ques. Where do you reside?
Ans. In Corinth, Kent Co., Mich.
Ques. What is your age and occupation?
Ans. Age, 39; occupation, practice of medicine and surgery.
Ques. How long have you practised medicine?
Ans. About 14 years.
Ques. Are you acquainted with the complainant, Enos Johnson?
Ans. I am.
Ques. How long have you been acquainted with him?
Ans. Eleven or twelve years.
Ques. Are you acquainted with his wife?
57 Ans. I am.
Ques. How long have you been acquainted with her?
Ans. Eleven or twelve years.
Ques. Have you ever practised your profession in his family?

Objected; incompetent, irrelevant, & immaterial.

Ans. I have.
Ques. Did you ever treat or prescribe for his wife?
Ans. I have.
Ques. Do you remember the fact of having heard about Mr. Johnson having entered land under the U. S. homestead law, near the village of Little Traverse, in this State, upon which he intended to settle?
Ans. I do.
Ques. At that time was you acquainted with the physical condition of Mrs. Johnson?
Ans. I was.
Ques. State whether her health was good or bad at that time?
Ans. Bad.
Ques. Who was the family physician of the complainant at that time?
Ans. I was.

Ques. Had you practised much in his family up to that time?

Ans. I had treated several different members of his family at different times previous to that time.

58 Ques. Do you know whether at that time Mrs. Johnson was suffering from any particular complaint or disease?

Ans. I do.

Ques. What was it?

Ans. Prolapsus of the uterus.

Ques. Had that disease been one of long standing or of comparitively recent date?

Ans. I think of long standing.

Ques. Was it of a serious nature or slight?

Ans. It was of a serious nature.

Ques. What was its effect upon her general system?

Ans. It was prostrating. Disabling her move about upon her feet.

Ques. In your judgment was her complaint of such a character as to require, so far as possible, absolute rest and quiet on her part?

Ans. It certainly was.

Ques. Was she confined to her bed any considerable portion of the time by reason of that complaint?

Ans. She was.

Ques. What in your judgment would have been the effect on her considering her condition of health and the state of her complaint to have taken a journey from her then place of residence to Little Traverse?

Ans. Certainly injurious, perhaps dangerous.

Ques. Was you consulted by Mr. Johnson at that time as to the propriety of her taking such a journey?

59 Ans. I was.

Ques. What was your professional advise to him?

Ans. That she should remain at home and keep quiet.

Ques. Do you know whether in consequence of your advise and her condition, she did so remain at home and keep quiet?

Ans. I do not know; I suppose she did.

Ques. When I say home, I mean their then place of residence; is that the place to which you refer in answer to your last question?

Ans. It is.

Ques. Where was that place of residence?

Ans. In the township of Gaines, Kent co., Mich.

Ques. In Mrs. Johnson's particular case was there anything that would tend to particularly aggravate her complaint in case your directions were not followed?

Ans. There was.

Ques. What was it?

Ans. In all cases of prolapsus of the uterus a recumbent position and quiet are favorable to recovery. She was exceedingly fleshy; there was great irratabil*ly* of the organs involved in the disease which rendered quiet especially necessary.

Ques. Did her age also make it the more necessary in your judgment?

Ans. I don't think it did.

60 Ques. When did you last see Mr. Johnson and learn anything concerning her condition and health?

Ans. I think about six weeks or two months ago.

Ques. Still suffering from the same complaint?

Ans. Yes.

Ques. Doctor, did you know or did you hear the fact that subsequent to the time to which your attention has been already directed Mr. Johnson did remove his wife from their place of residence on to land near the village of Little Traverse?

Ans. I did hear of it.

Ques. State, as near as you can, about how long after that time was it you heard Mr. Johnson had so removed his wife.

Ans. I can't be definite; I think a year or two.

Ques. Subsequent to that did you again attend upon and prescribe for this same difficulty of Mrs. Johnson's?

Ans. I think I did.

Ques. Where did you find her then?

Ans. At her home in Gaines.

Ques. You mean at the same place where you prescribed for her before?

Ans. I do.

61 & 62 Ques. Did you hear of his removing her from that place to Little Traverse more than once?

Ans. I think not.

Ques. At the time you attended upon her after having been so removed and returned to Gaines, what was her condition then?

Ans. It was not materially different from what I have described before.

Ques. For how long time could she be on her feet with a proper regard to her health?

Ans. Not for any length of time, at all, at those periods I am speaking of having attended her.

Ques. Was that complaint painful?

Ans. Yes.

Ques. In her case was it dangerous in case your directions were not followed?

Ans. I think so.

The above testimony was taken subject to the objection that it was incompetent, irrelevant, and immaterial, and that the att'y should have the same benefit of these objections as though made at the time it was asked.

Cross-examination:

Ques. How far did you reside from the residence of Mr. Johnson?

Ans. About three miles and three-quarters.

Ques. State when you were first called upon to visit Mrs. Johnson.

63 Ans. I can't give the date.

Ques. State as near as you can recollect.

Ans. I presume nine or ten years ago.

Ques. Has she been suffering with this disease ever since that time?

Ans. She has had this disease ever since that time, and has suffered a part of the time.

Ques. State, Mr. Wright, about what time it was you first heard of Mr. Johnson's having entered this homestead.

Ans. I think four or five years ago.

Ques. Can you tell us in what time in the year you first heard of the fact?

Ans. I cannot.

Ques. Do you know what Mrs. Johnson's condition was at the time you heard of the fact of Mr. Johnson's having entered a homestead?

Ans. Her particular condition at that particular time I cannot state.

Ques. How many times, Doctor, have you visited Mrs. Johnson professionally within the last four or five years?

Ans. I would think four or five times. I cannot be exact about it.

Ques. State, Doctor, how many times you have seen her during that four or five years.

Ans. I presume forty or fifty times. I have seen her frequently.

Ques. You state, Doctor, that you have seen her forty
64 or fifty times; where was she these times?

Ans. Usually at their home in Gaines.

Ques. Where else?

Ans. I think once at my house; I think I met her in a buggy in the road once or twice.

Ques. State where you found her at these different times you speak of seeing her; was she in bed or walking around?

Ans. Sometimes lying down; sometimes walking around.

Ques. During the last four or five years has the condition of her health always been the same?

Ans. No, sir.

Ques. I understand you, then, that at times she was worse, do I?

Ans. That was a fact; she was worse at times.

Ques. State, Mr. Wright, how far the complainant resides from the railroad, the Grand Rapids and Indiana R. R.

(The Dr. asks "the nearest station?" answer by Mr. Pratt, "Yes, sir.")

Ans. About five miles and a quarter.

Ques. You speak of Mrs. Johnson moving to Little Traverse; do you know when that was?

Ans. I spoke of having heard that she moved to Little Traverse; I couldn't give the date.

65 Ques. State, if you know, what the condition of her health was at that time. Whether worse or better than it had been previously?

Ans. It must of been better, or she could not have gone.

Ques. You say it must have been better, or she could not — gone. Now it must have been better than it was—when?

Ans. Than it was at the time Mr. Johnson consulted me as to the advisability of their going to Little Traverse.

Ques. State when it was that he consulted with you as to the advisability of her going to Little Traverse.

Ans. I think three or four years ago.

Ques. Can't you state the month or year?

Ans. No, sir.

Ques. At the time Mr. Johnson consulted with you as to the advisability of his wife going to Little Travers, was she better or worse than she had been for six months or a year previous?

Ans. I think she was getting over one of her bad spells, or had just got over one of them.

Ques. State about how often she would have these bad spells, about how often.

66 Ans. There was no regular time for their recurrence; they depended upon whether she had over-exerted herself on her feet, or any way to bring them on; I don't think I could answer it any more fully than that.

Ques. How many times have you been called to attend Mrs. Johnson during the last four or five years?

Ans. I think four or five times.

Ques. Did you attend Mrs. Johnson or treat her, except when you were called?

Ans. No, sir.

Ques. When you were called, state whether she was having one of her bad spells, as you term it.

Ans. She was.

Ques. Were you ever called except when she was having a bad spell?

Ans. Not to see her.

Ques. Then four or five bad spells is all you know of her having within the last four or five years?

Ans. All that I know of of my own personal knowledge.

Ques. State, Doctor, whether in your opinion it would have been unsafe for Mrs. Johnson, during the interval between one of these bad spells, as you term it, and another, to have rode on the cars from Grand Rapids to Petoskey.

Ans. I don't think that simply riding on the car would have been unsafe.

67 Ques. Do you know, are you well enough acquainted, Doctor, with Mrs. Johnson's physical condition between the period of time you were called upon to visit her, to state whether she could or could not with safety travel from her home in Kent Co. to Mr. Johnson's homestead in Emmet county?

Ans. I think she could not prudently.

Ques. Will you state why she could not?

Ans. I think the exertion attending the journey would be pretty certain to occasion greater prolapsus of the ulterus and make her sick.

Ques. Has that been her condition ever since April, 1875?

Ans. I think it has.

Ques. When you met Mrs. Johnson riding on the road, state what she was riding in.

Ans. In a one-horse buggy.

Ques. Can you state when that was, and how far she rode?

Ans. I can't state when it was; once she had rode from her home in Gaines to my place, a distance of three miles and three-quarters; the other time I don't know how far she rode; she was about a mile and three-quarters from home.

Ques. After Mrs. Johnson's return from Little Traverse was she worse or better from what she had been previously?

Ans. I think she had a sick spell afterwards.

68 Ques. Was it worse than the sick spell she had previous to that time?

Ans. I think not; I think about the same.

Redirect:

Ques. You state on your cross-examination that you had seen Mrs. Johnson, you thought, forty or fifty times within the last four or five years; now state whether in these interviews and by means of them you kept yourself informed of her condition.

Ans. I did.

Ques. And it was from that knowledge of her condition, and that ascertained when specially called up to that time, that you advised Mr. Johnson that it was not safe for her to remove to Little Traverse?

Ans. It was.

Ques. Was there ever in her case inflam-ation, acute inflam-ation attending her complaint?

Ans. There was.

Ques. State whether at such times she suffered great pain or not.

Ans. She did.

Cross:

Ques. You have stated, Mr. Wright, that you are unable to testify to the precise day when you were called upon to give your opinion as to the advisability of Mrs. Johnson's going to Little Traverse; will you state now, sir, how many times you have been called upon to treat Mrs. Johnson previous to that time and within the past five years?

69 Ans. I think, two or three times.

Ques. Well, between those two periods of time how many times had you seen her?

Ans. I would presume, a dozen times.

Ques. Can you state how long it was after you advised Mr. Johnson that it was not safe for his wife to go to Little Traverse that she went, or you are informed she went?

Ans. I don't know certainly the length of time, but I should think probably a year.

Redirect:

Ques. You state, Doctor, on your cross-ex. that you didn't claim simply riding on the R. R. cars as being particularly dangerous; now what was there attending such a journey as that you did deem as being particularly dangerous to her?

Ans. The excitement and fatigue attending getting to the cars, getting on the cars, in getting from the cars to their home in Little Traverse; in fact, the exertion attending the journey.

(Signed) P. B. WRIGHT, *M. D.*

Taken, subscribed, and sworn to before me, this 22nd day of June, 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

70 Another witness produced, sworn, and examined on part of the complainant, testified as follows, to wit:

My name is Robert Stauffer.

Ques. What is your age?

Ans. 33 y'rs.

Ques. Where do you now reside?

Ans. North of Little Traverse.

Ques. Please state how far.

Ans. About three miles.

Ques. Are you acquainted with the complainant in this case?

Ans. Yes, sir.

Ques. You are his son-in-law?

Ans. Yes, sir.

Ques. Are you acquainted with the west half of the northwest fractional quarter, and the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter of section seven, in township thirty-five north, of range five west, in the county of Emmet, in this State?

Ans. Yes, sir.

Ques. State whether that is the land entered by the complainant for homestead purposes under the U. S. homestead law.

Ans. Yes, sir.

Ques. Do you remember the date of that entry?

Ans. I think I do.

Ques. State it as near as you can recollect.

Ans. April the 17th, 1875.

71 Ques. Where did Mr. Johnson reside at the time he made that entry?

Ans. In Gaines, Kent Co., Mich.

Ques. Within six months after that entry was made did Mr. Johnson make or cause to be made any improvements on those lands?

Ans. Yes, sir.

Ques. Well, what? State fully.

Ans. I think there was about seven acres cleared and a house put up.

Ques. What kind of a house?
Ans. A frame house.
Ques. Any cellar under it?
Ans. A small cellar.
Ques. Well, how much of a frame house was it?
Ans. It was 16x22, 8 feet studding.
Ques. What kind of a roof?
Ans. A double roof.
Ques. Shingle?
Ans. Yes, sir.
Ques. House clap-boarded?
Ans. It was boarded up and down.
Ques. Lathed & plastered inside?
Ans. Not within the first six months.
Ques. When was it lathed and plastered?
Ans. It never was; it was ceiled on the inside with matched lumber.
Ques. More than one room?
Ans. There was a partition run through it.
Ques. What kind of a foundation was there to the house?
72 Ans. It stood on stone and blocks.
Ques. Any well dug?
Ans. Yes, sir.
Ques. Any fence built?
Ans. Yes, sir; there was a fence built around the seven acres.
Ques. Were any crops sown or planted on that seven acres within that six months?
Ans. Yes, sir.
Ques. What?
Ans. Oats and millet and potatoes.
Ques. State whether Mr. Johnson was there personally within that time?
Ans. Yes, sir.
Ques. When did he come?
Ans. I think it was on the 5th of October, 1875.
Ques. State, as near as you recollect, how long he then remained there.
Ans. Until a few days before Christmas.
Ques. Living in that house?
Ans. Yes, sir.
Ques. Where was you during this six months referred to?
Ans. I lived on the place there from the last of June, or the first of July, I think, and lived there the bal. of the first six months.
Ques. What was you doing while living there during the first six months?
Ans. Working for Mr. Johnson.
Ques. On these same lands?
73 Ans. Yes, sir; the most of the time.
Ques. What did you do there within that first six months?
Ans. Clearing, ploughing, fencing, and putting in crops, and building a house.

Ques. Was that improvement of timbered land.
Ans. No; not very heavy.
Ques. What was the timber principally?
Ans. Poplar, beech, and iron wood.
Ques. Was you married then?
Ans. Yes, sir.
Ques. Was your wife with you?
Ans. Yes, sir.
Ques. Did Mr. Johnson have any property in the house within that six months?
Ans. Yes, sir, he did; bed-clothes and provisions.
Ques. What did he do while there within that first six months?
Ans. I think he sowed some wheat, got some lumber, and helped fix the house.
Ques. You say you was working for him?
Ans. Yes, sir.
Ques. Since you first went on to that land, where have you and your family resided?
Ans. On the same place, till one year ago this last spring.
Ques. Where did you go then?
Ans. I went on to a piece of land beyond there, of my own.
Ques. How much improvements was there on these lands in question at the time you left?
74 Ans. I can't tell exactly; there was a little improvement done after Mr. Lee went on them.
Ques. Describe it.
Ans. Well, he probably cleared off a couple of acres, and underbrushed a couple of acres.
Ques. On what day did you remove from the land in question?
Ans. I think it was about the middle of April.
Ques. Of what year?
Ans. 1879.
Ques. Where was Mr. Johnson at the time you went away from there?
Ans. I can't tell; I supposed he was in Gaines.
Ques. Was he present when you left the land?
Ans. No, sir.
Ques. Did you leave the land by his direction?
Ans. No, sir.
Ques. By whose directions did you leave the land?
Ans. I didn't have directions from nobody; I couldn't stay there any longer.
Ques. Well, why couldn't you stay there any longer?
Ans. Mr. Lee's wife came there and began to tear down the chicken-house and stable, and I didn't know but that she would tear down the house.
75 Ques. Did you ever receive any notice or order to leave from Mr. Lee, the defendant.
Ans. Yes, sir.
Ques. Now state up to the time you left how much improvement

Mr. Johnson had made, and what those improvements were on the land altogether.

Ans. Well, he had twelve acres cleared and in crops, and fenced, and a stable, dug a well.

Ques. How much fencing was there?

Ans. I think there was one hundred and sixty or eighty rods of board fence and the rest was pole or brush fence.

Ques. Any timber slashed down, not burnt off?

Ans. Yes, sir; I think there was over three acres.

Ques. What is your business?

Ans. I work on a farm.

Ques. Taking everything into consideration, what, in your judgment, was the real cost of the improvements what Mr. Johnson had caused to be made on those lands up to the time you left?

Ans. Well, I don't think he could have done it short of five hundred dollars, taking it as things were when he went there.

Ques. What was the value of your services per month while working there for Mr. Johnson?

76 Ans. Well, that would be according to the way a man was hired, whether he boarded me or whether I boarded myself, and the going wages.

Ques. Did Mr. Johnson furnish provisions?

Ans. Yes, sir; he did some.

Ques. And he lived in that house whenever he was there?

Ans. Yes, sir.

Ques. Was Mrs. Johnson with him living there any during the first six months?

Ans. No, sir.

Ques. Do you know the reason why she did not come?

Ans. She was sick.

Ques. You say that Mr. Johnson stayed there until just before Christmas of that year; that he then went away. Can you tell when he returned there again?

Ans. I think it was on the 15th of June.

Ques. The next year?

Ans. 1876.

Ques. Did his wife come with him that time?

Ans. Yes, sir.

Ques. Where did they live?

Ans. On the homestead.

Ques. In that house you referred to?

Ans. Yes, sir.

Ques. What was the condition of her health at that time, so far as you know?

Ans. Her health was poor.

Ques. Did you all live together as one family?

77 Ans. We all lived in the house together.

Ques. Set separate tables?

Ans. No, sir.

Ques. Johnson furnish any provisions?

Ans. He furnished a part, and I furnished the rest.

Ques. How long did she stay at that time?

Ans. I think she stayed from the time she came there till last of September or the first of Oct.

Ques. Where did she then go?

Ans. She went outside.

Ques. You mean out of the woods; away from there.

Ans. Yes, sir.

Ques. Do you know why she went away; that is, whether it was on account of her health or not?

Ans. I think it was because her health was poor, and the house was not warm enough for her.

Ques. Did Mr. Johnson then go or stay?

Ans. He stayed.

Ques. Well, how long?

Ans. I can't say how long; I think some time.

Ques. And then went away, leaving you and your family still on the land?

Ans. Yes, sir.

Ques. Who was you working for all of this time?

Ans. When I worked on the place there I worked for Mr. Johnson.

78 Ques. Now, witness, did you have any interest in those lands Mr. Johnson entered as a homestead, or in any portion of them?

Ans. No, sir.

Ques. Was there any arrangement between you and Mr. Johnson, recent or otherwise, by which it was agreed or understood between him and you that those lands were to be yours, and that you was to have them after he had obtained a patent for them?

Ans. No, sir; there never was a word.

Ques. Now, after Mr. Johnson went away from those lands the second time, when did he return to them?

Ans. I can't just state the time, but it was within six months.

Ques. That you know positively?

Ans. Yes, sir.

Ques. Did his wife return with him that time?

Ans. No, sir.

Ques. How long did he then stay there?

Ans. I think it was about two months, or near two months.

Ques. Living and working on the land?

Ans. Yes, sir.

Ques. He made it his home then?

Ans. Yes, sir.

Ques. Do you know, or did you understand, the reason why his wife didn't come back with him that time?

79 Ans. I don't know.

Ques. Can you state when she did next come back there and live with him on the land?

Ans. She wasn't there but the one time.

Ques. To refresh your recollection, do you remember of that land

being advertised on the complaint of the defendant Lee, of its being abandoned as a homestead by Johnson?

Ans. Yes, sir.

Ques. At the time that that complaint was made, where were Johnson and his wife?

Ans. On those homestead lands.

Ques. Living there?

Ans. Yes, sir.

Ques. And he cultivating and working the land?

Ans. Yes, sir.

Ques. Where did you live?

Ans. In the house; the same house.

Ques. Who were you then working for?

Ans. Mr. Johnson.

Ques. Now, do you know the defendant Lee?

Ans. Yes, sir.

Ques. When did you first become acquainted with him, before or after that advertisement?

Ans. After that advertisement.

Ques. At the time that that advertisement was made and that complaint, what crops, if any, was growing on that land?

Ans. There was clover and wheat, oats, peas, potatoes, and corn.

80 Ques. And Mr. Johnson and his wife, with you working for him, were then actually living on the *on the* land.

Ans. Yes, sir.

Ques. Now, how long after that was it that you became acquainted with the defendant Lee? State as near as you can recollect.

Ans. I didn't have any particular acquaintance with him; I just knew him by sight.

Ques. At or about that time did you see him and have any talk with him about these lands, and the complaint he had made concerning them?

Ans. No, sir.

Ques. Did you ever have any talk with him about them?

Ans. Not until after he, Lee, claimed to own the lands as a homestead.

Ques. That is after he entered them and before he got his patent?

Ans. Yes, sir.

Ques. Did he make any offers, what he would do?

Ans. Yes, sir.

Ques. Now, go on and state, as near as you can recollect, just what he said at that time.

Ans. He offered me the deed of forty acres of land if I would leave the land and secure him that Mr. Johnson wouldn't come on to him for anything.

81 Ques. Forty acres of those same lands?

Ans. No, sir.

Ques. Well, what forty acres?

Ans. It was a forty acres that Mr. Burbeck owned.

Ques. Now, did you understand that Lee had an interest in that forty?

Ans. No, sir.

Ques. Then how did you understand that he would give you that forty if you would move off that land and get Johnson to not come on to him, Lee, for what he had done?

Ans. I understood that he would buy the forty.

Ques. For you?

Ans. Yes, sir.

Ques. You say that Lee offered you a deed of forty acres of land if you would leave the place and secure him that Mr. Johnson wouldn't come on to him for anything. Now, what was it that he didn't want Johnson to come on him for?

Ans. That homestead, I understood.

Ques. For getting that homestead away from Johnson; was that it?

Ans. That was what I understood from Lee.

Ques. In that conversation was there anything said between you and Lee about the fact the when Lee went and swore that
82 that homestead was abandoned, Johnson and his wife with you were then actually living on the land?

Ans. I don't remember.

Ques. Where did Lee reside, if you know?

Ans. In Little Traverse.

Ques. How far are those lands from Little Traverse?

Ans. About a mile.

Ques. On a main traveled road?

Ans. Yes, sir.

Ques. What was Lee's business?

Ans. I think he was clerking for Mr. Parker while he was in Little Traverse.

Ques. Clerking in what business?

Ans. In a store.

Ques. Had he been, so far as you know, a kind of a land speculator also?

Ans. I don't know.

Ques. Now, that forty acres of land, that Burbeck forty I mean, was it wild, or any of it improved?

Ans. Well, there was what they called an Indian garden on it.

Ques. Timbered lands or openings, or what?

Ans. Some was timbered and some had grown up with second growth.

Ques. What, in your judgement, was it worth?

Ans. One hundred and fifty or two hundred dollars.

Ques. Did you accept of this offer?

Ans. No, sir.

83 Ques. What did you tell him when he made the offer?

Ans. I told him I had nothing to do with the homestead; it was Mr. Johnson's.

Ques. Now, what, in your judgement, taking into consideration the improvements that had been made on it, the character of the soil,

its near locality to the village of Little Traverse, was that homestead worth at the time that Lee made that complaint?

Ans. Eight hundred or a thousand dollars.

Ques. What, in your judgement, is it worth now?

Ans. I should judge between two thousand and twenty-five hundred.

Ques. Now, sir, do you know whether, pursuant to the advertisement that was made upon Lee's complaint, Johnson appeared at the land office at Traverse City with witnesses in his behalf?

Ans. He did, at the time of the trial.

Ques. You mean the time of that complaint before the land officers?

Ans. Yes, sir.

Ques. Do you recollect the date of that trial?

Ans. I think it was the 19th of Sept., 1876.

Ques. Was you present at that trial?

Ans. Yes, sir.

Ques. Was Mr. Johnson there?

Ans. Yes, sir.

84 Ques. Did he have witnesses there in his behalf to show his right to the land?

Ans. Yes, sir.

Ques. Was he sworn in his own behalf?

Ans. Yes, sir.

Ques. Did you hear him testify?

Ans. Yes, sir.

Ques. What other witnesses were there in Johnson's favor? Name them, if you can.

Ans. Henry Bechtel, James Bell, and myself.

Ques. Who appeared as lawyer for Mr. Johnson at that time and place?

Ans. Mr. Standish.

Ques. Was you present and heard all that Mr. Johnson then and there swore to?

Ans. I think I was.

Ques. At that time and place, and in the making of answers to questions put to him concerning these homestead lands, did Johnson swear or testify as follows: "I have intended to give him (that is, meaning you) the land (that is, meaning the homestead lands) when I got my title."

Objection that it is not the best evidence; that Mr. Johnson's testimony should — produced by the original or a certified copy.

Ans. Not that I remember.

Ques. Has your attention been specially called to this matter before?

Ans. Yes, sir.

Ques. Now state whether, at that time & place & trial, Mr. Johnson did or did not testify & swear "that he intended to give

85 you the land when he got his title to it."

Objection, same as above.

Ans. He did not that I remember.

Ques. Did he testify at that time that he intended to give you that land, or any part of it, when he got his title?

Objection, same as above.

Ans. Not that I remember of.

Ques. Did he use any word having any such meaning or carr-ing any such intention?

Objection, same as last mentioned.

Ans. Not that I remember of.

Ques. Haven't you and other persons since then talked about this matter and the claim that he did give such testimony, and you then positively denied that any such testimony was given, and that at that time, when your memory was fresh concerning what did take place?

Ans. I don't know. I have talked with a good many. I might have said so. I think I did tell there was no such testimony.

Ques. Do you recollect whether, at that time & place, Johnson swore that he had lived on said land three or eight months, or any given number of months?

Objection, same as above.

Ans. If my memory serves me right, he didn't testify to that.

86 Ques. Did he testify at that time & place concerning his absence from the land after he entered it?

Objection same.

Ans. I think he did.

Ques. What was his testimony in that respect; state as near as you can recollect?

Objection same.

Ans. He told me the time he went on & and the time he went off and come on again; told how long he had been off.

Ques. Did he say anything about that he hadn't been absent from the land six months at any one time? If so, what did he swear to concerning that?

Objection, same as above.

Ans. Well, I don't know as I can word it word for word, but as near as I can remember he said he had not been off from it six months at any one time.

Ques. I mean between the time Johnson entered the land and the time Lee made the complaint; is that what you mean?

Ans. Yes, sir.

Ques. Now, as a matter of fact, was it true that Johnson had not been absent from the land six months at any one time between the date of his entry and the date of that complaint?

Ans. Yes; he had not been absent six months at any one time.

Adjourned till 9 o'clock a. m., June 23rd, 1880.

87 JUNE 23RD, 1880.

The parties and their respective att'ys appears at 9 o'clock a. m. Messrs. Pailthorp & Pratt, for the defendant; White & Dodge, for complainant.

The examination of ROBERT STAUFFER continued:

Ques. At that trial at Traverse City land office, was any testimony given by Mr. Johnson in which he swore that he had voted that year in the township of Gaines, in Kent Co., Mich.?

Objection, same as last above.

Ans. No, sir.

Ques. Did he testify as to where he had voted?

Objection, same as above.

Ans. No, sir.

Ques. Do you remember who took down the testimony that was taken at that trial; that is, who did the writing?

Ans. Mr. Moffat.

Ques. State as near as you can recollect how long that trial lasted.

Ans. It was about three hours.

Ques. Who conducted the trial for Mr. Johnson?

Ans. Mr. Standish.

Ques. Who examined the witnesses on the part of Mr. Lee?

Ans. Mr. Standish cross-questioned them.

Ques. Did not Mr. Moffat ask questions of the witnesses for Mr. Lee?

Ans. I don't remember.

88 Cross-examination by Mr. PRATT:

Ques. Mr. Stauffer, were you present at Traverse City on the day Mr. Johnson made his homestead entry?

Ans. Yes, sir.

Objection. All of the testimony of the witness on the direct ex. was taken subject to the objection that the same is incompetent, irrelevant & immaterial, and that the parties are entitled to the same benefit of exception as though made at the time the questions were propounded to the witness.

Ques. Did you also enter a homestead at the Traverse City land office on the same day that Mr. Johnson did?

Ans. Yes, sir.

Ques. Did you ever move onto, improve, or cultivate the land that you entered as a homestead?

Ans. No, sir.

Ques. State how long after Mr. Johnson's entry it was before any improvement was made upon his homestead.

Ans. About a month or little over.

Ques. By whom was that improvement made?

Ans. I made it for Mr. Johnson.

Ques: At the time you made this improvement was Mr. Johnson there?

Ans. Not the first improvement.

Ques. State how you came to make this improvement.

89 Ans. Well, Mr. Johnson told me to go on and make the improvement and he would pay for it.

Ques. What improvement did he tell you to make?

Ans. He told me to go on & clear the ground, put it into crops, and fence it.

Ques. How much land did you clear at that time?

Ans. I helped clear about seven acres.

Ques. Had that land ever been cleared before—I mean this seven acres?

Ans. I think it had and growed up again.

Ques. How large was the second growth?

Ans. Some was a foot—fourteen inches—and some smaller.

Ques. What do you mean—a foot through, or a foot high, or what?

Ans. A foot through or fourteen inches.

Ques. State, Mr. Stauffer, whether it stood thick on the ground or otherwise.

Ans. Some of it stood very thick and other parts of it was thinner.

Ques. About about how long did it take to clear the seven acres?

Ans. I can't tell just exactly how long it took.

Ques. How long after Mr. Johnson entered his homestead was it that he commenced building the house?

Ans. I think it was about two months.

Ques. State who built the house; who did the work.

Ans. I did.

90 Ques. How large was the house?

Ans. 16 × 22.

Ques. How tall?

Ans. 8 foot high studding.

Ques. Sheeted with rough or planed lumber?

Ans. Well, rough.

Ques. Battened or sided on the outside?

Ans. Not at that time.

Ques. Was it plastered or ceiled on the inside?

Ans. Not then it wasn't.

Ques. How long did it take, and how much did the material cost, to build it?

Ans. I can't tell precisely how much the material did cost, or how long it took to build it?

Ques. Was Mr. Johnson present on his homestead during the time you was building the house?

Ans. No, sir.

Ques. When did Mr. Johnson first visit his homestead after he made his entry?

Ans. He came on to it the 5th of Oct., 1875.

Ques. How came you to go on and build his house?

Ans. I built it by his orders.

Ques. When did he give you the order to build the house?

Ans. I think it was about a month or so after he made the entry.

Ques. Did he give you those instructions personally or by letter?

Ans. By letter.

91 Ques. After entering your homestead, why did you not go on to it and improve it?

Ans. Because it wasn't the land I was showed when I located it.

Ques. When did you find that out?

Ans. I think it was about the middle of May, 1875.

Ques. Did you have any agreement or understanding with Mr. Johnson about going upon his homestead and building a house and improving the land until after you had discovered that the land that you had entered as a homestead was not the land you had intended to enter, and you had determined not to go on to it and improve it?

Ans. No, sir.

Ques. And you informed Mr. Johnson of that fact before he instructed you to go on and improve or clear off his land and erect a house upon it?

Ans. I cannot give a definite answer on that; I am not sure.

Ques. When Mr. Johnson wrote you directing you to build his house, what, if anything, was said about your living on his homestead?

Ans. He told me to go on and improve it; put it into crops, and build a house, & move on to it, and see after it.

92 Ques. Did he state how long you might remain upon the land and improve it?

Ans. No, sir.

Ques. What did Mr. Johnson agree to pay you, and when and how was he to pay you for your services in clearing off the land and constructing this house?

Ans. Well, when he told me to go on and clear the place and he would pay me what we could agree on it was worth.

Ques. Did he furnish you with any money or material to enable you to build the house?

Ans. Not until he came on in October.

Ques. At the time Mr. Johnson came on to his homestead in Oct., did he bring any household goods with him?

Ans. Yes; he brought his bed with him and some provisions.

Ques. How long did Mr. Johnson remain on his homestead when he came on there in Oct., 1875?

Ans. He stayed until a few days before Christmas.

Ques. State, while there, whether he took his meals with you and your family.

Ans. He furnished his own provision, and we eat all together.

Ques. Was his victuals cooked separate from yours and your family's?

Ans. It was all cooked together.

Ques. Did he leave any furniture in the house when he went away?

93 Ans. Nothing, only his bed clothes and some tools.

Ques. Did you remain on the homestead after Mr. Johnson left?

Ans. Yes, sir.

Ques. Make any improvements on it?

Ans. Not until the next spring.

Ques. When did Mr. Johnson return again?

Ans. On the 15th of June, 1876.

Ques. State how you know that it was on the 15th day of June that Mr. Johnson returned.

Ans. Well, he was there only a few days till he was advertised, and we counted the time back.

Ques. Was that the time Mrs. Johnson came with him?

Ans. Yes, sir.

Ques. What household goods, if any, did Mr. Johnson bring with him at that time?

Ans. He didn't bring any.

Ques. State who at this time constituted Mr. Johnson's family.

Ans. I don't understand the question.

Ques. Did any other persons, except Mr. Johnson and his family, come to your house at that time?

Ans. No, sir.

Ques. Had Mr. Johnson at that time any children?

Ans. He had none with him,

Ques. Had Mr. Johnson at that time any children?

Ans. Yes, sir; I think he had some.

94 Ques. How many?

Ans. I think there were seven.

Ques. How many were living at home?

Ans. I don't know; I cannot tell.

Ques. You say, Mr. Stauffer, in your direct ex., that the reason Mrs. Johnson didn't come on to the homestead before was because she was sick and was not able to come; how do you know she was sick?

Ans. They wrote to us by letter that she was sick, & when Mr. Johnson came he said she was sick.

Ques. Then all you know about her health was what they told you and wrote you, is it?

Ans. That is all that I knew then.

Ques. When had you last seen Mrs. Johnson previous to the time when she came up there in June, 1876?

Ans. I think it was in Sept., 1875.

Ques. Where was she at that time?

Ans. In Gaines, Kent Co.

Ques. Was she keeping house then? If so, where?

Ans. Well, sir, I think at that time she was not able to do any work.

Ques. Was she and her husband living together at that time & keeping house?

Ans. They were living in the house together.

Ques. Was any of their children living with them?

Ans. Yes, sir.
Ques. How many?
Ans. I can't tell.
95 Ques. What were their ages?
Ans. I think one was about 11 or 12, & the rest I am not sure of their ages.
Ques. Were they older or younger?
Ans. Older.
Ques. Where were Mr. Johnson & his wife living at that time?
Ans. In Gaines.
Ques. Did Mr. Johnson have a farm there?
Ans. Yes, sir.
Ques. House, horses, cattle, sheep, hogs, hens, & chickens there on his farm?
Ans. There was all that stuff there, but I don't know whether it was his or not.
Ques. Who did they belong to if they were not his?
Ans. I think his son had some there.
Ques. How long did Mr. & Mrs. Johnson stay after they came there in June, 1876?
Ans. I think she stayed until the last of Sept. or the first of Oct., and he stayed longer.
Ques. During that time, what improvements did he make on the place?
Ans. He built about sixty rods of board fence and underbrushed some.
Ques. Has Mr. Johnson been on the homestead since he left there in 1876?
Ans. Yes, sir.
Ques. When was he on there after that time, after he left in fall of 1876?
Ans. I think he was on again in April, 1877.
Ques. How long did he remain on there then?
96 Ans. I think about two months.
Ques. Is that the last time he was on it?
Ans. I think he was on the place once after that.
Ques. How long was he on it at that time?
Ans. I don't remember.
Ques. At the time Mr. Johnson left the homestead in 1875, the first time he was there, did you make any memoranda *of* at the time he left of the day of his leaving?
Ans. No, sir.
Ques. By what means are you able to fix the time when he left at that time?
Ans. It was just a few days before Christmas.
Ques. By what means are you able to fix the date of his leaving?
Ans. I just remember that he left just a few days before Christmas.
Ques. When was your attention first called to the fact of the date of his leaving at that time?
Ans. I think it was called at the trial in Traverse City.

Ques. Is the house that you first built on this homestead still there?

Ans. No, sir.

Ques. What became of it?

Ans. It was burned down.

Ques. When did it burn down.

Ans. I think it was the spring of 1877.

97 Ques. State whether any other house was built on the homestead.

Ans. Mr. Johnson put up another one right away.

Ques. What kind of a house was that?

Ans. It was 12 x 16 with shanty roof on it.

Ques. What was that made of?

Ans. Lumber.

Ques. How was it built?

Ans. It was high on one side and slanted back.

Ques. How high was it between joints?

Ans. It was ten foot on one side and seven on the other, I think.

Ques. Shingle or board roof?

Ans. Board.

Ques. Was the covering to the house rough or planed lumber?

Ans. It was rough.

Ques. How many windows in it?

Ans. There were two half windows.

Ques. How many doors?

Ans. One.

Ques. Who was living in that house that burnt up at the time it burnt up?

Ans. Mr. Johnson, myself, & family.

Ques. How came it to burn?

Ans. It caught fire in the roof.

Ques. Was it in the night or in the day-time?

Ans. It was in the day-time.

Ques. About how much was the second house that Mr. Johnson built worth?

98 Ans. The lumber cost between fifteen and twenty dollars.

Ques. When was it you said the house burnt down?

Ans. I think it was in 1877.

Ques. What month?

Ans. The last of April or the first of May, as near as I can remember.

Ques. Was it before or after Mr. Lee notified you to quit and get off the premises?

Ans. It was after.

Ques. When was it that you surrendered up possession to Mr. Lee?

Objection by complainant's solicitor, on the ground that it being incompetent to assume a fact that has not been proven, to wit, that he did surrender up possession to Mr. Lee.

Ans. I can tell when I left, that is all I can do.

Ques. When did you leave?

Ans. One year ago this last spring.

Ques. In your direct ex., Mr. Stauffer, your attention was called to the fact that you had made certain affidavits in reference to what took place at the land trial at Traverse City before the register in reference to this homestead claim; by whom was that affidavit drawn?

Ans. Mr. Humphrey.

Ques. Who was he?

99 Ans. He was a notary public and lawyer.

Ques. Was he acting as att'y for Mr. Johnson at that time?

Ans. I think not.

Ques. At the time you swore to that affidavit did you know any more about the case than you do now?

Ans. I don't know as I do.

Ques. Do you think you know any more about it now than you did then?

Ans. I don't know whether I do or not.

Ques. Mr. Stauffer, can you repeat all the testimony that Mr. Johnson gave before the register at Traverse City on the trial of this homestead case?

Ans. I can repeat some of it.

Ques. Can you repeat all of it?

Ans. I don't know whether I can repeat all of it or not.

Ques. Have you seen or read, or heard read, the testimony that Mr. Johnson gave on that trial since the day of the trial?

Ans. No, sir; I did not.

Ques. Did you hear the testimony that Mr. Johnson gave at that trial read over to him by the register after it had been written down by the register and before Mr. Johnson signed it?

Ans. Yes, sir.

Ques. Do I understand you, Mr. Stauffer, to say that you

100 haven't seen or read nor heard Mr. Johnson's testimony read since the day of the trial in Traverse City?

Ans. I have heard read what was claimed to be his testimony.

Ques. When was it that you heard that read?

Ans. I don't just remember.

Ques. Was it before or at the time that you made the affidavit that you have referred to as having been drawn by Mr. Humphrey?

Ans. I think it was before.

Ques. Did you also hear it read at the time you made the affidavit before Mr. Humphrey?

Ans. I think I did.

Ques. Can you state the date of that affidavit?

Ans. I don't think I can.

Ques. Was it made before or after you had left the homestead?

Ans. It was made before.

Ques. Are you positive?

Ans. Yes, sir.

Ques. Was it before or after the month of May, 1877?

Ans. I think it was after.

Ques. How came Mr. Humphrey to draw this affidavit?

Ans. I was working over there in the lumber woods, and Mr. Johnson wanted me to make an affidavit; I hadn't time to
101 come over here to Little Traverse, so we went to Humphrey.

Ans. Was Mr. Johnson with you?

Ans. Yes, sir.

Ques. Who paid Mr. Humphrey for drafting this affidavit?

Ans. I don't know; I suppose Mr. Johnson did.

Ques. Did Mr. Humphrey do any other writing for Mr. Johnson at that time in relation to this homestead matter that you now remember of?

Ans. I think not.

Ques. Mr. Stauffer, will you state how many acres of land was cleared off on this homestead on the 21st of June, 1876?

Ans. There was twelve acres.

Ques. How much did Mr. Johnson pay you for making this clearing?

Ans. Well, I couldn't say how much he paid me; he paid me some at one time, & some at another.

Ques. How much fence was there on this land on the 21st of June, 1876?

Ans. There was about sixty rods of board fence, and the rest was pole and brush.

Ques. What did Mr. Johnson pay you, if anything, for building the fence?

Ans. Well, there was no set price for any one job; whatever he wanted me to do I went on and done it, and he was to pay me whatever it was worth.

Ques. My question is not what he was to pay you, but what
102 he did pay you; please state what he did pay you for building the fence.

Ans. I think he got me some provisions for that.

Ques. I didn't ask you how he paid you, but what he paid you; state how much he paid you for building the fence.

A. I don't remember.

Ques. How long did you work for Mr. Johnson on this homestead.

Ans. Well, I can't state just the length of time.

Ques. About how long was it?

Ans. I can't state.

Ques. Did you work for him up to the time you left the homestead in the spring of 1879?

Ans. No, sir; not steady.

Ques. When did you do the last work for Mr. Johnson on this homestead?

Ans. One year ago last summer.

Ques. State, Mr. Stauffer, how much Mr. Johnson paid you in all for what you did for him in working upon and improving this homestead, in question.

Ans. I can't; I haven't kept any memoranda of it.

Ques. When did you ever settle with him, and come to any agree-

ment as to how much your services were worth, and how much he should pay you for the labor that you had performed and the
103 services you had rendered in clearing, fencing, and otherwise improving the homestead in question?

Ans. I can't just state fully; we never settled up just one time fully for it; and when I did a job of work we would settle up.

Ques. When did you settle up with Mr. Johnson for the work you did in building the house?

Ans. Well, I can't say for sure, but I think it was that fall of 1875.

Ques. How much was Mr. Johnson to pay you for building the house; that is, what on the settlement did you and he agree that your services were worth for building the house?

Ans. I don't remember.

Ques. Did he pay you by the day, or the week, or by the month, for the services you had rendered in building the house?

Ans. Whatever we thought the job of work was worth he allowed me.

Ques. What did he allow you for building the house?

Ans. Well, sir, I don't remember.

Ques. Did you have any settlement, and come to any agreement as to the amount your labor was worth, and the amount he would pay you for building the house?

Ans. Yes, sir; we had.

Ques. How did you get at that amount; did you render
104 him a statement of your time showing the number of days you had worked, or in what manner did you arrive at the value of service?

Ans. Whatever we could agree on what the job was worth.

Ques. Upon what basis did you go to work to determine what the job was worth?

Ans. I don't understand all that question.

Ques. Did you fix the value of your services by the number of days you worked, or did you simply say that the work was worth so much without reference to the length of time you was engaged in building it?

Ans. I didn't keep any track of my time; only what we could agree on the job was worth.

Ques. Can you state about how much Mr. Johnson paid you altogether for the labor you performed for him?

Ans. I don't think I could.

Ques. While on the homestead did you work for Mr. Johnson all the time?

Ans. No, sir.

Ques. Did you keep track of the amount of time that you worked for other parties?

Ans. Sometimes I did, and sometimes I didn't.

105 Ques. How did you ascertain how much and for how long a time you worked for Mr. Johnson on his homestead?

Ans. I can't tell that; I don't understand it right.

Ques. Did you keep any account with Mr. Johnson in any manner while you was living on his homestead?

Ans. No, sir.

Ques. How much did you and he agree upon in your settlement that he would pay you for your labor in building fence on the homestead?

Ans. We didn't make no agreement beforehand.

Ques. I mean on the settlement.

Ans. I don't remember.

Ques. Did you estimate the value of your labor when you had your settlement by the number of days you were at work building the fence, or at so much a rod?

Ans. Well, that fence building was estimated in along with some other work.

Ques. What other work?

Ans. Clearing and ploughing and drag-ing.

Ques. When was that settlement had?

Ans. Well, I can't say when it was done.

Ques. You say this settlement included building the fence, clearing of land, ploughing, and drag-ing; state how much clearing is included.

106 Ans. I can't say whether it was all just at that time or not; I think there was between four and five acres done at that time.

Ques. How much plowing did it include?

Ans. Well, there was about the same amount of plowing as there was of clearing.

Ques. How much drag-ing?

Ans. Well, just the same ground to be drag-ed over there was plowing.

Ques. When did you have this settlement?

Ans. I can't just state the time.

Ques. How much did he agree to pay you on this settlement for the labor you had performed in building the fence, clearing off the land, & plowing and drag-ing?

Ans. Well, I can't tell you just exactly how much it was.

Ques. About how much?

Ans. Well, I should judge it to be over a hundred dollars.

Ques. Did that include any of the labor you had performed in building the house?

Ans. I think not.

Ques. Did it include any of the material that you had bought when you built the house?

Ans. I think not at all.

Ques. In what way did he pay you this amount; was it in money or property?

Ans. I think some of it was in money and some in provision.

107 Ques. Do you know how much money?

Ans. I couldn't say.

Ques. What became of the crops that was raised upon the land while you was living upon it?

Ans. I don't understand that question.

Ques. What became of the wheat that was raised upon the land while you was living on the homestead?

Ans. I used some of it up; I guess all of it.

Ques. How was it about the other crops; what did you do with them?

Ans. I think some was used for feed while we was doing his work, the rest I used.

Ques. Mr. Stauffer, what was the value of the improvements that Mr. Johnson had made up to the date it was advertised?

Ans. Well, I should think they were worth about five hundred dollars.

Ques. How much did you swear that they were worth at the time of the homestead trial at Traverse City?

Ans. I don't know as I can state just what I said then.

Ques. Is that all you want to say about it?

Ans. I think I said then that it was worth between four and five hundred.

Ques. What was the house worth?

Ans. I don't know how much it would be worth for sure.

Ques. What was the value of the fence that was on the place?

108 Ans. I couldn't say for sure; I didn't keep track of how much it did cost.

Ques. What was the value of the clearing that was on the place at the time it was advertised?

Ans. Well, I never made an estimation of any one piece of work that was done. I estimated the whole work that was done altogether.

Ques. You went off from the homestead in the spring of 1879, did you?

Ans. Yes, sir.

Ques. Did you raise any crops on the land the year before?

Ans. I put out some garden stuff and planted some potatoes, and Lee's folks dug them up.

Ques. Did you cut any hay on the place?

Ans. Yes, sir.

Ques. Did Mr. Johnson pay you for any services that you performed in carrying on the homestead in the year 1878?

Ans. Yes, sir.

Ques. How much did he pay you for that year's service?

Ans. I can't say for sure how much he did pay me in all.

Ques. Did he pay you for that year's service at the same time that he paid you for what you had done previously?

Ans. No, sir.

109 Ques. Then why can't you tell what he paid you for your labor in the year 1878?

Ans. I don't just exactly remember what it was that he paid me in all. I remember some that he paid me.

Ques. Give us the date and the amount of any payment that he made you.

Ans. Well, I can't give the date, but I remember once that he gave me twenty dollars.

Ques. Any other payment?

Ans. I think that he got me some provisions, too.

Ques. What other payment did he make you?

Ans. I don't remember just now what it was.

Ques. You spoke of plowing on the homestead; whose team did you have to do the plowing with?

Ans. I had my own team.

Ques. What other property besides the cattle did you have?

Ans. A plow & drag.

Ques. You had household goods, did you not?

Ans. Yes, sir.

Ques. Had you any ready money or other means to support yourself & family at the time you went on this homestead?

Ans. I had no money after I went on there.

Ques. Did Mr. Johnson, while you was on the homestead, pay you any more money or furnish you any more provision than was necessary for the support of yourself and family?

Ans. No, sir.

110 Ques. Did he make these payments and furnish this provision of his own accord, or only when requested to do so by you?

Ans. Well, some he made on his own accord and some I requested him to.

Ques. When you asked him for money would you tell him how much you wanted?

Ans. I don't know as I did.

Ques. When he made payments of his own accord what would he say about it?

Ans. I don't remember now.

Ques. After you entered your homestead at the Traverse City land office, in April, 1875, where did you go?

Ans. I went home, where I was living before, in the township of Gaines, Kent Co., Mich.

Ques. How long did you remain there?

Ans. Well, I can't say for certain, but, I think, about two or three weeks.

Ques. Where did you go then?

Ans. I moved to Little Traverse.

Ques. Did you intend when you left Gaines to move on to your homestead?

Ans. Yes, sir.

Ques. State why you didn't do as you intended.

Ans. It wasn't the piece of land I looked at when I located.

Ques. What kind of land was it?

Ans. It was very hilly, rough land.

111 Ques. When you moved from Gaines to Little Traverse did you move on to Mr. Johnson's homestead?

Ans. No, sir.

Ques. How long was it after you reached Little Traverse before you moved on to the Johnson homestead?

Ans. I think it was about two months or near two months.

Ques. Did you stop to build the house before you moved on to the land?

Ans. Yes, sir.

Ques. Wasn't there a shanty already on the land?

Ans. Yes, sir.

Ques. Why didn't you move into that?

Ans. Well, it wasn't hardly big enough.

Ques. How large was it?

Ans. Well, I can't just tell the size of it; I didn't measure it.

Ques. When you left Gaines to go to Little Traverse had you had any talk with Mr. Johnson about building a house for him on his homestead?

Ans. No, sir; I think not.

Ques. Did you take the money that you had intended to use in building a house on your homestead and use it in buying material and in building the house that you built on Mr. Johnson's homestead?

Ans. Yes, sir; I used some of it.

112 Ques. Did Mr. Johnson furnish you any money or material to be used in building this house until after he came up to his place in Oct., 1875?

Ans. Well, I think not.

Ques. At the time Mr. Johnson wrote you to go on and build this house, had you or your wife written to him for his permission or consent to go upon the homestead and erect a house and live there until he should come up?

Ans. Well, sir, I don't remember as we did. We might have done so; I don't remember.

Ques. How much money did you pay out for material and labor in building the house?

Ans. Well, sir, I can't just state how much.

Ques. Was it more or less than a hundred dollars?

Ans. I think it was some less than a hundred dollars; I can't state just how much it was.

Ques. Did Mr. Johnson ever have a team on his homestead?

Ans. No, sir; not of his own.

Ques. Did he have any farming tools or implements on the homestead?

Ans. None; only what I had there.

Ques. At the time Mr. Johnson came up to his homestead, in October, 1875, how much bedding did he bring with him?

Ans. Well, I don't just remember; but he brought enough for his own bed.

Ques. Had you at that time any extra bed or bedding that you could use for his accommodation?

113 Ans. Yes; I think we had.

Ques. At the time you made your final settlement with Mr. Johnson, or at any time when you settled with him, did you take into account and allow him the value of the crops that had been raised on the place and used by you?

Ans. Yes, sir.

Ques. When was it—at what settlement?

Ans. Well, I can't just tell at what time; I think I allowed him for crops a couple of times.

Ques. How much did you allow him for crops?

Ans. Well, sir; I can't state just how much.

Ques. Do you think it was less than two hundred dollars?

Ans. Yes, sir.

Ques. When Mr. and Mrs. Johnson came up in June, 1876, did they bring any household furniture with them?

Ans. No, sir; I think not.

Ques. Did they bring any clothing with them?

Ans. I think they brought some bed clothes and some clothing with them.

Ques. This bedding and those bed clothes that Mr. Johnson brought when he came up in October, 1875, and the bed clothes he and his wife brought when they came up in June, 1876, what became of them?

Ans. There is some of them at my place yet.

Ques. Did he ever give them to you or your wife?

Ans. He never gave them to me that I know of.

114 Ques. How large a trunk did they bring with them in June, 1876, if any?

Ans. They brought two of pretty good size; one trunk and a chest.

Ques. Do you know how they got from Little Traverse up on the homestead?

Ans. I went down and brought them up with oxen and wagon.

Ques. What kind of a road was it from the homestead up to Little Traverse?

Ans. Pretty good roads.

Ques. Do you know what Mr. Johnson's testimony was at the time of the homestead trial as to the value of the improvements that he had put upon the lands?

Ans. I think it was between four and five hundred dollars.

Ques. Are you as positive in regard to the value that he placed upon the improvements as you are in regard to his testimony as to what his intentions were about giving the place to you, and also about his voting in the spring of 1876?

Ans. Well, I think that is it, as near as I can remember.

Ques. How much money did you tell Mr. Johnson that you had expended in building the house and making other improvements on the homestead when he came up in October, 1875?

Ans. Well, sir, can't say just what amount I did say; I don't remember; I didn't keep memoranda.

115 Ques. When you were buying material and paying out money for Mr. Johnson's benefit, didn't you keep any account of the amount you paid out?

Ans. Well, I think I had kind of a memoranda of it until after we settled.

Ques. What did you keep your memoranda in?

Ans. I think it was just on a piece of paper.

Ques. Where did you carry the piece of paper or keep it?

Ans. I think I had it in my pocket-book.

Ques. What kind of a piece of paper was it?

Ans. Well, sir, it was a piece of letter paper.

Ques. How large a piece?

Ans. It was not a very large piece.

Ques. Did you make the entries on this piece of paper when you paid out money?

Ans. I don't hardly understand it.

Ques. Did you set down the amount on the piece of paper when you paid out money?

Ans. I think I did.

Ques. What did you write it with, a pencil or pen?

Ans. A pencil.

Ques. Then you had the memoranda to settle by, did you?

Ans. Yes, sir.

Ques. How much did the memoranda that you had amount to?

Ans. Well, I can't tell just exactly; I didn't keep the memoranda after we settled; this was the only memoranda of anything I kept.

Ques. What was the first date and what amount of money paid of the first entry on the memoranda?

116 Ans. I don't remember.

Ques. Will you positively swear that you had any memoranda that you had kept of any sums of money that you had paid out for the benefit of Mr. Johnson, and that you settled with him from that memoranda?

Ans. I had a memorandum, but I didn't settle for everything with him from that memoranda.

Ques. Now, Mr. Stauffer, what did you mean when you stated that you couldn't tell how much you told Mr. Johnson you had expended in building the house and making other improvements on the homestead when he came up in October, 1875, because you hadn't made or kept any memoranda of it?

Objected to by complainant's solicitor, on the grounds, 1st, that the question does not correctly call the attention of the witness to what he has sworn; 2d, that it does not state such an interview always as required on explanation; and, 3d, the question itself does not with sufficient clearness direct the attention of the witness' mind to either contradiction—apparent contradictions; and again, 4th, because the question is so framed as not to inform the witness whether he is asked concerning memoranda of payments or memoranda of what he told Mr. Johnson.

117 Ans. Well, I didn't keep any memoranda of my own work; how many days I had to charge work to get the building laid out; I couldn't give a memoranda of all of it.

Ques. What did you mean by the answer you gave to this question? I will now read the question and then the answer: "How much money did you tell Mr. Johnson you had expended in building the house, and making other improvements on the homestead, when he came up in October, 1875? Now, answer: Well, sir, can't

say just what amount I did say; I can't remember; I didn't keep any memoranda."

Ans. I hadn't kept any memoranda of what I told him I had expended.

Ques. Then you mean simply that you didn't keep a memoranda of what you told him you had paid out, but you did have a memoranda of the amounts that you had paid out from time to time for his benefit, did you?

Ans. I meant that I hadn't kept a memoranda of the whole of it, nor of the settlement.

Ques. My question was not of what was found due to you on the settlement, but was how much money you told Mr. Johnson you had expended in building the house and making other improvements on the homestead; did you, or did you not, have a memoranda showing these amounts?

Ans. No; not for the whole of it; not in full.

118 Ques. Can you state the amounts you had entered on this memoranda?

Ans. No, sir; I can't.

Ques. Did Mr. Johnson, so far as you know, keep any account of the money that he paid you, or of the provisions he supplied you?

Ans. I don't know, but I should think he did.

Ques. Since the adjournment of this examination to-day noon have you talked with Mr. Dodge or Mr. White, the attorneys in this case, in regard to your evidence?

Ans. I have not.

Ques. During the adjournment at noon did you have any conversation with either Mr. White or Mr. Dodge about this case and about the testimony you would give?

Ans. No, sir.

Ques. At the time of the homestead trial at Traverse City are you sure that you stated any value that the improvements were worth?

Ans. I think I did state that they were worth between four and five hundred dollars.

Ques. While Mrs. Johnson was on the homestead in 1876 state whether or not she rode around the country in a lumber wagon and over the rough roads.

Ans. I think she rode to Petoskey when she went outside.

Ques. You mean from the homestead to Petoskey?

Ans. Yes, sir.

Ques. What distance is it?

119 Ans. It is ten or eleven miles.

Ques. What kind of roads?

Ans. Some was pretty rough & some was not.

Ques. Wasn't it quite rough most of the way at that time?

Ans. There were places that were pretty rough, and some of it wasn't.

Ques. What did she ride in?

Ans. A wagon.

Ques. What kind of a wagon?

Ans. A lumber wagon.

Ques. Any spring under the seat or box?

Ans. There was a spring under the seat.

Ques. What kind of a team was it, a span of horses or a yoke of oxen?

Ans. A yoke of oxen.

Ques. Was she sick or well at that time?

Ans. She wasn't very well.

Ques. Was she any sicker at that time than she had been during the time that she was on the homestead?

Ans. I don't remember for sure, but I don't think she was so sick.

Ques. At any time while she was on the homestead was she so sick that she was obliged to have a doctor?

Ans. Not that I remember.

Ques. Where was it and when was it that you had the conversation with Mr. Lee in regard to his giving you a deed of forty acres of land if you would leave the homestead and get Mr. Johnson to agree not — do anything with him for getting his homestead away from him?

Ans. I think it was on the steps in front of Mr. Parker's store, in Little Traverse.

Ques. When was it?

Ans. I think it was right away after they had served a notice on me to leave the place, that spring.

Ques. Who commenced that conversation?

Ans. Mr. Lee.

Ques. What did he say to you?

Ans. Well, I don't know as I can remember how the conversation commenced.

Ques. In that conversation, did Mr. Lee say to you that he didn't care anything about Mr. Johnson, but that you had done considerable work there, and he didn't care to see you lose it, and that if you would go off and leave the place quietly he would be willing to help you to another piece of land, or words to that effect?

Ans. I can't say for certain, but I don't think those are the words that he said.

Ques. In that conversation, didn't you say to him that a party had a tax title on a piece of land, near Little Traverse, that if you could get, you thought you would be willing to leave the place, or words to that effect?

Ans. No, sir; I don't think I did.

Ques. Didn't Lee seem to be willing to do what was fair about paying you for what had been done on the homestead?

Ans. I don't remember for sure what was said about it.

Redirect by Mr. DODGE:

Ques. In your former examination by me you stated that Mr. Johnson came upon the homestead in October, 1875; that he stayed there until a few days before Christmas; that he then went outside, and he got back on the lands in June, 1876. Now, to refresh your recollection, is it not a fact that Mr. Johnson came back on the lands in March, 1876, but he didn't stay there then only two or three weeks,

and then went outside again, and came back with his wife in June? What is your recollection about that now?

Ans. Well, sir, I think he did come back in March.

Ques. Before Mr. Lee advertised Mr. Johnson's homestead, had you traded any at Mr. Parker's store with him, Lee, and got acquainted with him any?

Ans. No, sir; I think not.

(Signed) ROBERT STAUFFER.

Taken and subscribed and sworn to before me, this 28th day of June, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

Examination adjourned till to-morrow, June 25th, at 9 a. m.

122 Another witness produced, sworn, and examined on the part and in behalf of the complainant by complainant's solicitor, testifies as follows:

My name is Isaac C. Brown.

Ques. What is your age?

Ans. 38.

Ques. Where do you reside?

Ans. At Little Traverse, Emmet Co., Mich.

Ques. What is your business?

Ans. Farming, principally.

Ques. Are you acquainted with the complainant, Enos Johnson?

Ans. I am.

Ques. How long have you been acquainted with him?

Ans. Fifteen or sixteen years.

Ques. Are you acquainted with the lands situated a short distance north from Little Traverse, which he entered as a homestead, the title of which is now being contested in this case?

Ans. I am.

Ques. Were you acquainted with the fact that he had entered those lands about the time that entry was made?

Ans. Yes, sir.

Ques. Do you know when the first improvement upon that land was being made and the house was being built?

Ans. I do.

123 Ques. Did you know or hear of the fact that a complaint was made against him at the land office in Traverse City by def't Lee, that the land had been abandoned?

Ans. I know; I seen it advertised in a paper.

Ques. Were you acquainted with the condition of that land, and the improvements that had been made thereon up to the time when that complaint and advertisement was made?

Ans. I was.

Ques. State what improvements Mr. Johnson had made or caused to be made on these lands up to that time.

Ans. He had about twelve acres improved; had a house built;

I think the size was 16x24, one story high, frame house; doors and windows in it, and a good shingle roof on it, and he had a log barn; I can't mention the size; and if I remember right, at the time when it was advertised, he had about sixty or eighty rods of board fence built there; the balance was inclosed by brush and pole fence; the improved land in crops; the crops consisted of wheat, oats, corn, and potatoes.

Ques. Was there a well dug?

Ans. Yes; there was a well, and there was a small cellar under the house.

Ques. What, in your opinion, was the cost or value of those improvements at that time?

Ans. I think the improvements were worth from four to five hundred dollars.

124 Ques. State how much the land was worth at that time, taking into consideration the character of the soil, the timber growing on it, the amount of the improvements on it, and its nearness to the village of Little Traverse.

Ans. It was well worth $1,150, taking into consideration the locality and the improvements.

Ques. Are you acquainted with Wm. H. Lee, the def't in this case?

Ans. I am.

Ques. How long have you been acquainted with him?

Ans. About four years ago.

Ques. Do you know where he now resides?

Ans. I think I do.

Ques. Where?

Ans. I think I noticed to-day that he moved into his house on the top of the hill, in Little Traverse; I saw the notice in the paper.

Ques. What was his business at the time he made this complaint?

Ans. Clerking.

Ques. In what kind of a store?

Ans. W. E. Parker's store.

Ques. Do you know how long he had been engaged in that business?

Ans. I do not.

Ques. Do you know whether he has ever actually lived upon the lands and personally engaged in cultivating them?

Ans. Yes.

125 Ques. Do you know whether the complainant, Enos Johnson, ever actually lived upon these lands?

Ans. He has.

Ques. Within how long time after he entered the lands did Johnson go and live thereon?

Ans. I think he moved on about the 1st of Oct., 1875.

Ques. How long did he stay there after he first went on, before he went away again?

Ans. I think he stayed about three months.

Ques. Did you see him there?

Ans. I did.

Ques. How long was he gone before he returned to these lands again?

Ans. Two or three months.

Ques. Do you know where he lived at the time Mr. Lee made that complaint?

Ans. I think I do.

Ques. Where?

Ans. He resided on those homestead lands.

Ques. How far did you live from there at that time?

Ans. About one mile and a half.

Ques. Beyond there, or between there and Little Traverse?

Ans. I lived east from the village of Little Traverse, and the land in question is in a northeasterly direction from Little Traverse.

Ques. Was Mrs. Johnson living there with complainant at the time the complaint was made?

Ans. Yes, sir.

126 Ques. Were you well enough acquainted with the time Mr. Johnson lived upon these lands between the date of his entering and the date of Mr. Lee's complaint, so as to be able to state whether or not Mr. Johnson had not been absent from that land six months at any one time between the date of his entry and that complaint?

Ans. Yes.

Ques. Now, what was the fact as to whether or not he had or had not been so absent six months at any one time between the dates referred to?

Ans. He had not been absent six months at any one time to my certain knowledge.

Ques. What, in your judgment, is the present value of those lands?

Ans. The land is worth at least, now, twenty-five hundred dollars.

Cross-ex. by Mr. PRATT:

Objection. The above testimony was all taken subject to the objection that the same is incompetent, irrelevant, & immaterial, with the understanding that the parties should have the same benefit of exception as though made at the time the questions were asked.

Ques. How often were you on Mr. Johnson's homestead after he entered it?

Ans. I cannot name the number; I have been there quite frequently.

127 Ques. State whether you saw Mr. Johnson between the 17th day of April, 1875, and the 1st of Oct. of that year?

Ans. I don't remember as I did.

Ques. Was he on his homestead between those two dates?

Ans. Not to my knowledge.

Ques. Was Mr. Johnson present at the time this house was built you speak of?

Ans. Not when it was first put up.

Ques. At the 1st of Oct., 1879, was the first time you saw him on his homestead after he entered it?

Ans. I believe that was the first time I saw him personally.

Ques. When did Mr. Johnson reside upon this homestead?

Ans. In the year 1875.

Ques. What makes you say that he resided there?

Ans. Because he actually resided there to my knowledge.

Ques. You are positive, are you, that he resided there in 1875?

Ans. I am positive.

Ques. What do you mean when you say that he resided there?

Ans. I mean that he lived in his house.

Ques. When did he begin living in his house?

Ans. In Oct., 1875.

Ques. Was any one else living in the house at that time?

Ans. Yes, sir.

128 Ques. Who?

Ans. Mr. Stauffer, his son-in-law.

Ques. This house that you speak of having been built on the land in 1875; is it therenow?

Ans. No, sir.

Ques. What became of it?

Ans. It was destroyed by fire.

Ques. When?

Ans. I think it was in 1878.

Ques. At the time Mr. Lee made complaint that the homestead had been abandoned, what was that house worth?

Ans. It was worth a hundred or one hundred and fifty dollars.

Ques. How much clearing was there on that land at that time?

Ans. Twelve acres, I think.

Ques. How much was it worth an acre to make that improvement?

Ans. It was worth about $25 per acre to improve it.

Ques. How much fence did you say that there was on that land at that time?

Ans. I said about sixty or eighty rods of board fence.

Ques. How much was that worth a rod to build it?

Ans. To furnish the material and do the work would be worth about one dollar a rod.

Ques. How much was it worth to dig the well?

Ans. I think that it was worth about fifty cents a foot.

Ques. How deep was the well?

Ans. I could not state positively; I think about ten or

129 twelve feet. There is one thing I wish to state; I would not say certain that there was twelve acres; there was about that.

(Signed) ISAAC C. BROWER.

Taken, subscribed, & sworn to before me, this 23rd day of June A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

Another witness, HENRY BECHTEL, produced on the part of the complainant and in his behalf, was sworn and examined and testified as follows:

Ques. What is your name, age, & residence?

Ans. My name is Henry Bechtel; my age is fifty, and I reside in Little Traverse township, Emmet Co., Mich.

Ques. Are you acquainted with the complainant?

Ans. I am.

Ques. How long have you lived in Emmet Co., this county?

Ans. A little over five years.

Ques. Are you acquainted with the lands in controversy in this suit that Mr. Johnson entered under the homestead act?

Ans. I am.

Ques. Did you see him living in the house on that land at any time in the year 1875?

Ans. I have.

Ques. When did you first see him there living? State as near as you can recollect.

Ans. In the first part of Oct., 1875.

130 Ques. Did you hear of the fact that def't Lee had entered a complaint at the land office at Traverse City that that land was abandoned by Johnson?

Ans. I did. I saw it when advertised in the paper.

Ques. Was you well enough acquainted with the settlement and residence of Mr. Johnson on that land to say whether he was or was not absent from it for the period of six months at any one time after he entered it and before Mr. Lee made that complaint?

Ans. Yes, sir.

Ques. What was the fact?

Ans. He was not absent at any one time six months during that time.

Ques. Where was he living at the time that complaint was made and when you saw that advertisement?

Ans. He was living in a house on that homestead.

Ques. With his wife?

Ans. With his wife with him.

Ques. What, in your judgment, was the value of the improvements he had made on these lands up to that time?

Ans. Considering the whole, in the neighborhood of about five hundred dollars. This is for general improvements.

131 Ques. Was you present at the trial that was had concerning that land at the land office at Traverse City before Register Moffat?

Ans. I was.

Ques. Did you hear the testimony of Mr. Johnson at that trial?

Ans. I think I did—I know I did.

Ques. At the time of that testimony, and in the giving of it, did Mr. Johnson testify and swear that he intended to give that land to his son-in-law, Stauffer, when he got the title to it?

Objected to, that it was not the best evidence.

Ans. I think not, to the best of my knowledge and remembrance, under the direct examination.

Ques. When did you first hear that it was claimed that Mr. Johnson had so sworn?

Ans. I think when I first saw the original in Washington I was in Washington.

Ques. Did you not then and there at once promptly contradict it and say that no such testimony was given?

Ans. I did, and I then received a copy from the land commissioner of the original.

Ques. What did you do with that copy?

Ans. I gave it to Mr. Johnson when I returned.

Ques. Why did you ask the commissioner for that copy?

Ans. Having learned from Mr. Johnson and a letter from Mr. Stone, the member of Congress, the reason that Mr. Johnson lost his land was on account of his own evidence given at Traverse
132 City—that is, the general outline there—I wrote a letter to — of the Interior for a copy of the aff't or evidences given on the trial at Traverse City. I received no copy of the evidences, but a copy of the duplicate of the homestead entry made by Johnson. That caused me to go to Washington and asked to see the original papers.

Ques. Now, you understood that the reasons assigned for deciding the case against Mr. Johnson by the Secretary of the Interior was because Mr. Johnson's own testimony reported to the Sec't'y was, in some respects, of such a character that the Secretary decided against him; is that so?

Ans. Yes, sir.

Ques. Now, did you understand, while you were there at Washington, what it was in the testimony of Mr. Johnson that led the Secretary to decide the case against him?

Ans. I did not.

Ques. Did you hear?

Ans. I did not; any particular point.

Ques. Now, to refresh your recollection, did you not understand that the reasons why Secretary Schurz decided the case against Mr. Johnson was on the ground that the testimony of Johnson, as reported from the Traverse City land office, it was made to appear that Johnson had himself testified that he intended to give that land to Stauffer when he got his title, and also that he voted in the spring of the year when that trial was had in Gaines, Kent Co., Mich.?

133 Ans. I can't remember; one point I remember was upon the ground that Mr. Johnson had stayed but eight months on the land in question between the entry and the examination.

The witness is here shown a paper purporting to be a affidavit made by him on the 19th of February, 1878, before Alphonse J. Southard, circuit court commissioner for Emmet Co., Mich., concerning the testimony given by Mr. Johnson at the trial in Traverse City, and is asked the following question:

Ques. Is this your signature affixed to this affidavit?

Ans. Yes, sir.

The witness is then requested by complainant's solicitor to read that affidavit.

Objected to the reading by the witness of the paper for purposes of refreshing his recollection before he has testified fully of the subject-matter stated in such affidavit; the request is withdrawn by complainant's solicitor.

Ques. You say that you was present when Mr. Johnson gave his testimony at Traverse City; state your recollections of what Mr. Johnson's testimony there was concerning how much he had been absent from these homestead lands between the date of his entry and that trial?

134 Objection; not the best evidence, the original testimony having been reduced to writing, and not shown to have been lost or destroyed or beyond the reach of the complainant; would, if proven at all, except by the production of the original, must be proven by a certified copy under the official hand and seal of the officer having custody of such original.

Ans. If I remember right, he did not state how much of that time he was absent from the entry to the trial at Traverse City, but he stated, as near as I can remember, when he went on those lands, away from them again, and returned to them again, to the time of the advertising.

Ques. Did he state how long he had not been absent? If so, what?

Objection same as above.

Ans. He stated that he had not been absent more than six months at any one time.

Ques. In the giving of that testimony at that time and place, did Johnson testify and swear that he intended to give that land to Stauffer when he got his title to it?

Objection as above.

Ans. Not as I can remember; I think not.

Ques. Have you any recollection that Mr. Johnson, in the giving of that testimony, said anything about giving the land to Stauffer when he got his title to it?

Objection same as last.

Ans. He did not so testify.

134½ Ques. In the giving of that testimony by Johnson, did he actually testify and swear that he had voted the spring before in Gaines, Kent county, Michigan?

Objection same as last.

Ans. Under cross-examination by A. S. Lee, he acknowledged that he had voted there.

Ques. What had A. S. Lee to do with that case then?

Ans. I don't know, unless he was acting as attorney for W. H. Lee; I know he was there.

Ques. When that question was put to Mr. Johnson by Mr. Lee, as to where he had voted the spring before, what did Col. Standish, Mr. Johnson's attorney, do then?

Ans. It seems to me he objected, and said it had nothing to do with the case, if I mistake not.

Ques. What did Register Moffat say?

Ans. I cannot remember that he made any answer on it.

Ques. To refresh your recollection, when Col. Standish objected to this question, stating that it had nothing to do with the question at issue, did not Moffat decide that Standish was right, sustained the objection, and the answer of Johnson was not taken as testimony?

Objection same as noted above.

Ans. I cannot remember what he did say.

134¾ Objection; not the best evidence, the original testimony having been reduced to writing, and not shown to have been lost, destroyed, or beyond the reach of the complainant; and, if proven at all, except by the production of the original, must be proven by a certified copy under the official hand and seal of the officer having custody of such original.

Cross-examination by Mr. PRATT:

Ques. Now, Mr. Bechtel, what led you to go to Washington?

Ans. Having not heard or received an answer to my letter I had written to the Secretary of the Interior, which Johnson had requested me to write, and not having received a copy of the affidavit or evidence regarding the said lands in question.

Ques. Had you any iterest in this land?

Ans. No, sir.

Ques. Were you employed by Mr. Johnson to go to Washington?

Ans. Yes, sir.

Ques. How far did you live from the land in question at the time Mr. Johnson entered it and at the time of the land trial?

Ans. At the time Mr. Johnson entered the land I lived in the town of Gaines, Kent county; from there I removed in May, 1875,
135 to Little Traverse; and from there I moved on to the north half of section one, township thirty-five, range five west, where I now reside; as near as I can come to it I was six miles and a half from it.

Ques. What was your arrangement with Mr. Johnson when he employed you to go to Washington to see about this land?

Ans. There was no arrangement at all.

Ques. What do you mean when you say there was no arrangement at all?

Ans. There was no agreement of any shape or form whatever, if that words it.

Ques. What did Mr. Johnson say to you about going to Washington?

Ans. He wanted me to look after that land in question.

Ques. What did he say?

Ans. He wanted me to look after the evidences of that trial at Traverse City that were sent to Washington.

Ques. Did he say anything about expenses?

Ans. He furnished the money.

Ques. Did he pay you for your time?

Ans. Part of it.

Ques. When you reached Washington did you see the original testimony of Mr. Johnson as it had been returned by the officers of the U. S. land office at Traverse City to the officers of the U. S. Land Office at Washington?

Ans. I saw one there purporting to be that shown to me by the Land Commissioner or his clerk.

136 Ques. Did you read his testimony?

Ans. I did read it over.

Ques. Did you take particular notice of the testimony?

Ans. I thought I did, and requested the commissioner to give me a copy.

Took recess till 9 a. m. June 24th, 1880.

Cause called at 9 a. m. June 24th, 1880.

Ques. At the homestead trial at Traverse City, after Mr. Johnson had testified, did you hear the register, Mr. Moffat, read his testimony over to him?

Ans. I think I did.

Ques. How long after that trial was it before your attention was called to the fact of what Mr. Johnson had testified to?

Ans. It was in the latter part of the year 1877, as near as I can remember.

Ques. Was it before or after the Secretary of the Interior had rendered his decision cancelling Mr. Johnson's homestead entry.

Ans. It was after.

Ques. Mr. Bechtel, at what time was it that your attention was called to Mr. Johnson's testimony, was it at the time you went to Washington, and was there shown the evidence that had been reported from the land office at Traverse City to the General Land Office at Washington?

Ans. It was in the fall of 1877, as I have said before. I couldn't specify the day or month exactly. It was in the fall of 1877

137 when I learned through Mr. Johnson having received letters that his land was cancelled by the Secretary of the Interior particularly on his own evidence given at Traverse City; it was before I went to Washington

Ques. You testified before the land officers at Traverse City on the trial of Mr. Johnson's homestead?

Ans. Yes, sir.

Ques. At that time did you state or testify as to the value of the improvements that had been made by Mr. Johnson on his homestead.

Ans. I think I did, if my memory serves me right, at least it seems so in my mind that way.

Ques. You testified yesterday in your direct ex. that the value of the improvement made by Mr. Johnson on his homestead, up to the time it was advertised, was five hundred dollars, did you not?

Ans. Yes, sir; about five hundred dollars.

Ques. State, if you remember, what you swore was the value of these improvements at the time of the land trial at Traverse City in 1876.

Ans. As near as I can remember, in the neighborhood of four or five hundred dollars, or three or five hundred, I wouldn't be certain.

Ques. Didn't you swear at that trial that the improvements made by Mr. Johnson were worth nearly three hundred dollars?

138 Ans. I might, as I said before; it was either three or five hundred; my memory does not serve me as correctly as it used to do.

Redirect:

Ques. What other business, if any, did you have at Washington besides looking at Mr. Johnson's land matter?

Ans. Not any.

Ques. Then you went there specially on that business?

Ans. Yes, sir.

Ques. How soon after Lee made the complaint which led to the contest at Traverse City was it that you became interested for Mr. Johnson?

Ans. I couldn't possibly say, but probably it was a month or so before the trial; it was during or between the advertising and the trial.

Ques. Why did you take so much interest in Johnson's behalf; because you thought he was being wronged out of his land, or because you were hired, or any other reason?

Ans. Well, one point was, I was well acquainted with Mr. Johnson, and after it was advertised, I thought that it looked to me that they were going to take the advantage of him, and as all of the circumstances was known to me, at that *that* time was passing and repassing, and he asked me whether I would'nt go as a witness to Traverse City; I said I would if he wanted me to; I had no

139 special interest whatever, except as a friend, and I liked to see a man have his own rights.

Ques. Was you one of the persons who signed a petition to the Commissioner of the General Land Office at Washington, setting forth what Johnson had done upon the lands in question, and the facts of his case respecting his right therto, and asking for a rehearing in the case?

Ans. I was.

Ques. Then you know that steps were taken in Mr. Johnson's behalf for a rehearing of his case?

Ans. I do.

Ques. I mean after it had been decided against him?

Ans. Yes, sir.

Ques. Will you look at that paper and state whether that is the original petition?

A. Yes, sir; this looks like the paper.

Ques. Do you know anything about this paper being forwarded to Washington?

Ans. No more than through Mr. Johnson; I think so.

Ques. Did you see it while you were at Washington?

Ans. I did not.

Ques. Did you hear the testimony of James Bell taken this forenoon in this case?

Ans. I did.

Ques. Did you hear his testimony in relation to this point, namely, whether Mr. Johnson testified and swore, in the giving of his
140 testimony at Traverse City, as to voting in the township of Gaines in the spring before that contest?

Ans. I did.

Ques. Did you notice Bell's testimony in that respect?

Ans. I did.

Ques. Since the giving of your testimony yesterday concerning that same subject-matter, have you reflected upon it at all?

Ans. I have.

Ques. What is your present recollection concerning that point, that is as to whether Mr. Johnson then actually testified that he had voted in Gaines, or that it might have been otherwise?

Ans. After reflecting over it since yesterday in my answer in Standish making the objection, there was some talking done that I can't remember, but I remember Mr. Moffat overruled or ruled it out, that it had nothing to do with it.

Ques. What, that is whether he voted or not?

Ans. Yes, sir.

Ques. Deciding it was immaterial?

Ans. Yes.

Ques. From the fact of such a decision, did you get the understanding that there was no record made by Moffat on the subject of voting by Mr. Johnson?

Ans. I did.

141 Ques. How long did you say you had been acquainted with Mr. Johnson?

Ans. My first recollection is some time along about twenty-five years ago that I first saw him, and then from that till thirteen years back. I have seen him frequently; I didn't see him until about thirteen years ago, and from that time I have seen him frequently.

Ques. You have known him ever since?

Ans. Yes, sir.

Ques. Was he the head of a family during the month of April, 1875?

Ans. He was.

Ques. Did you know anything about the condition of his wifes' health while he was living on this land?

Ans. No.

Ques. Did you hear anything about it?

Ans. I think not.

Ques. I understood you to say that you were acquainted with Mr. Johnson while he lived in Gaines, is that true?

Ans. Yes, sir; I lived beside him one year; we joined farms.

Ques. What year was that?

Ans. In 1874.

Ques. You came here in May, '75, yourself?

Ans. Yes, sir.

Ques. Before the time that Johnson entered these lands, did you know anything about his calculation to enter lands under the homestead law, and settle upon them?

142 Ans. I did.

Ques. What did you know about it?

Ans. All I knew about it was in the fall of 1874, he was coming up here in this northern country to look after homestead land, and I told him I would go along with him and see, and we did so.

Ques. You came with him?

Ans. I came with him.

Ques. Did you know what lands he selected to enter?

Ans. Yes, sir.

Ques. What lands?

Ans. These same lands in question in this case.

Ques. When was that selection made? State as near as you can recollect.

Ans. In Oct., 1874.

Ques. Where was Stauffer then living, if you know; I mean Robert Stauffer?

Ans. I cannot remember exactly where; it seems to run in my mind that he was living in Gaines, Kent Co.

Ques. Was you with Mr. Johnson when he entered the land?

Ans. I was.

Ques. Did you have any talk with him in regard to those lands, what he was going to do with them, at or about that time?

Objection; ground, testimony is hearsay.

Ans. I did not.

143 Ques. What do you know, if anything, about Johnson furnishing the means to build the house upon the lands, the house that was burned down, or either of them?

Ans. I understood by Johnson that he had furnished some.

Ques. Did you ever see Johnson himself personally at work on the land?

Ans. I have.

Ques. More than once?

Ans. Yes, frequently.

Ques. Between the time of the entry and the contest at Traverse City?

Ans. Yes, sir.

Ques. State whether, from what you have seen of his work in the making of improvements upon that land, Johnson showed that he had control of the same and was really the principal man.

Ans. I have, and from what I could see and take knowledge of he was the whole controller of, and what was done was done by his orders.

Ques. And direction?

Ans. And direction.

Ques. Did you understand that in his work upon that land—I mean between the date of that entry and the contest at Traverse City—Robert Stauffer was in fact working for Mr. Johnson as his hired man? Did you understand that to be the relation between them?

Ans. I think so, while he was upon the land.

Ques. Why do you think so?

144 Ans. By the circumstances that I would notice when I was there and saw him at work.

Ques. Did you hear at that time that that was the relation really existing between Johnson & Stauffer—that is, before any contest in regard to the land had arisen?

Objected to, as being hearsay.

Ans. I didn't hear anything else that I know of now.

Ques. Who told you that Stauffer was working for Johnson in what he did on the land?

Objection to hearsay testimony.

Ans. Mr. Johnson and Mr. Stauffer himself.

Ques. Was that before Lee made the complaint?

Ans. Yes, sir.

Ques. I understood you to testify in this case that you were frequently over there on these (Johnson's) lands before Lee made that complaint; did you go into the house?

Ans. I did, and sleep and eat there a number of times.

Ques. While Mrs. Johnson was there?

Ans. I was there either once or twice; once I am certain of, with my wife on a visit while Mrs. Johnson was on the place.

Ques. When you was there in the house on your visit, who appeared to be mistress in the house—Mrs. Johnson or Mrs. Stauffer?

Ans. There did not seem to be much difference; the old lady was not able to work as a general thing while I was there; I

145 think she done as much as the young one; I did not take much notice of it.

Ques. Do you remember the fact, or hearing of the fact, of Mrs. Johnson leaving long in the fore part of the winter of 1876, or late in the fall of that year, and going back to Gaines?

Ans. I did hear of her so leaving.

Ques. Did you hear the reason why she went outside or back to Gaines?

Objected to, as hearsay.

Ans. I did not.

Ques. Did you understand in any way that she returned to Gaines on account of her ill health?

Objected to, as hearsay.

Ans. I don't remember of hearing anything more than what has been said on the trial here.

The testimony of the witness on redirect examination was taken, subject to the objection that it was incompetent, irrelevant, and immaterial, and with the same benefit as though made at the time the questions were asked.

Recross-examination:

Ques. You spoke [to] Mr. Bechtel about Mr. Johnson making a selection of this land in 1874; in what manner did he make his selections?

146 Ans. When we came up here to look at lands we found a certain set of men calling themselves land agents, and we inquired about homestead lands that had come in market in August before we came, and they were all taken up, said to be, but these said land agents, some of them or nearly all of them, said these new lands coming in market again for homesteading, and one among these ag'ts said he had certain lots he could show us of land, and among the land he showed he showed this land in question.

Ques. Did Mr. Johnson do more than simply decide in his own mind that when the land came in market again he would enter it as a homestead?

Ans. He did.

Ques, What did he do?

Ans. He bought some lumber, took it upon his land, and built a shanty.

Ques. That was all.

Ans. I think ——.

Ques. Do you know anything about what Mr. Johnson's intentions were except what he told you?

Ans. I do not.

Ques. At the time he made the homestead entry, did he say anything about his wife being sick?

Ans. Not as I can remember.

147 Ques. Do you know anything about Mr. Johnson giving orders or directions to Mr. Stauffer as to what he should do upon the place, except what Mr. Stauffer & Mr. Johnson may have told you?

Ans. I do not.

(Signed) HENRY BECHTEL.

Taken, subscribed and sworn to before me, this 24th day of June, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

Another witness produced, sworn*ed*, & examined in behalf of, and on the part of complainant, testified as follows:

Ques. What is your name, age, and occupation?

Ans. My name is James Bell; age, 30; occupation, general agent for H. O. Rose, of Petoskey.

Ques. Are you acquainted with the complainant, Enos Johnson?

Ans. I am, sir.

Ques. Are you acquainted with the lands which he entered under the U. S. homestead law, which are situated about a mile north of the village of Little Traverse in this county?

Ans. I am, sir.

Ques. Do you remember the fact of his right to these lands being contested on the complaint of Wm. H. Lee, the defendant, at the land office at Traverse City?

Ans. I do.

Ques. State what improvements Mr. Johnson had made or
148 caused to be made on those lands between the date of his entry and that contest, as far as you know.

Ans. Well, about three acres, I should judge now; it was some time ago that it was fenced with board fence in front, and a log fence on the sides; I should judge there was in the neighborhood of forty rods in front.

Ques. May you not be mistaken as to the quantity, and, in fact, was there not twelve acres instead of three?

Ans. There might have been that cleared; there was three acres fenced; about three acres.

Ques. Was there a house on the land?

Ans. Yes, sir; there was a shanty-house on it.

Ques. Are you acquainted with the def't Lee?

Ans. I am, sir.

Ques. What was his business at or about the time he made that complaint?

Ans. I think he was a book-keeper for W. E. Parker.

Ques. Where was he then living?

Ans. I think he was living here; I am not certain; his family was here or at Little Traverse.

Ques. His business required his presence at Little Traverse.

Ans. It did.

Ques. Did you, before that complaint was made, know the complainant?

149 Ans. I knew him by sight, and talked with him a little; was not very well acquainted with him.

Ques. About how far is that land situate from Little Traverse?

Ans. About three-quarters of a mile from the village.

Ques. On an ordinary traveled road in that direction?

Ans. It would be now.

Ques. Before that complaint was made, did you frequently see Mr. Johnson in the village?

Ans. I did.

Ques. Frequently see him?

Ans. Yes, sir.

Ques. What was the business of the firm by which Lee was employed?

Ans. General merchandise.

Ques. You then lived in the village of Little Traverse; your place of business was there.

Ans. It was my place of business; I lived there.

Ques. What was your business then?

Ans. It was land business and surveying.

Ques. Do you know whether Lee up to that time had been engaged in any land speculation?

Ans. I do not.

Ques. Were you well acquainted, Mr. Bell, with people around Little Traverse and in the direction of these lands from that village?

150 Ans. I was acquainted with most every man in the township, and knew every piece of land in the township very nearly.

Ques. What is your judgment as to whether at and before the time Mr. Lee made that complaint he might or might not easily, and by common diligence of inquiry, actually ascertained the truth as to whether Mr. Johnson actually then lived on these lands or not?

Ans. I think he could if he had made inquiry.

Ques. You deemed that fact, then, easily ascertainable?

Ans. Yes, sir.

Ques. Do you know A. S. Lee, his reputed brother?

Ans. I do, sir.

Ques. What was his reputed business at the time and before the making of that complaint?

Ans. He was in the land business.

Ques. What do you mean by land business; please explain it?

Ans. Well, sir, it is dealing in farming lands and homesteads at that time.

Ques. Robbing people out of their rights in order to make something?

Ans. No; I don't think they done that.

Ques. Was you present at that contest at the Traverse City land office?

Ans. I was.

151 Ques. Did you see A. S. Lee and def't Lee there?

Ans. I did.

Ques. Did you remain there while the testimony was being taken?

Ans. I did.

Ques. Was you acting for or in the interest of either party in that contest; if so, which one?

Ans. I went up there in the interest of Mr. Johnson as a witness.

Ques. Did you hear Mr. Johnson's testimony given at that time and place?

Ans. I did.

Ques. In the giving of that testimony what did Mr. Johnson testify to concerning absence from the place, these homestead lands, after he entered them?

Objection; that it is not the best evidence that the fact testified to

should be shown by the original affidavit made at the time or by a certified copy, unless he loses or destruction of the original is shown.

Ans. I think that he said he had been there three months out of eight, or three months out of six; I will not be certain; it was three months out of something.

Ques. Did he state that he had not been absent from these lands at any one time for any certain period; if so, what did he say in that regard?

Object- to, as last above.

152 Ans. I don't remember exactly; he spoke something in regard to his crops in Kent Co. that he had to look after.

Ques. Did he state any particular number of months that he was either on or off the lands the time of his entry of the lands and the time of that contest?

Objection same as above.

Ans. I don't remember.

Ques. What did he say was the time when he went on to the lands, in what month and what year?

Objection same as above.

Ans. It was in the year 1875; I can't remember what month; it was in the spring of the year.

Ques. You mean the spring of the year when he entered them, or when he went on to them?

Ans. When he entered them.

Ques. Now, then, what did he state was the time he came up and went on the lands to live; what month?

Objection same as above.

Ans. I think he said July; I am not certain.

Ques. Now, to refresh your recollection. Did he not say that it was in Oct., 1875, and that he stayed until Christmas?

Objection same as above, and that the question was directing the attention of the witness to what he did testify to, and leading.

Ans. I can't remember; I know that he said something
153 about leaving his Christmas ——, and I know he left Christmas at that time, but I cannot remember the month when he came in now. I did know at the time, it being so long ago, but I do remember of his saying that he left there about Christmas.

Ques. In the giving of that testimony of Mr. Johnson did he or did he not testify & swear as follows: "I have intended to give him (that is, his son-in-law, Robert Stauffer, meaning) the land (these homesteaded lands, meaning) when I (Johnson, meaning) get my title?"

Objection same as the last one.

Ans. No, sir.

Ques. He did not?

Ans. He did not.

Ques. Did Mr. Johnson, in the giving of his testimony in that contest, at Traverse City, testify & swear as follows: "I voted last spring in Gaines, Kent county, Michigan; there was no question made as to my voting"?

Objection same as above.

Ans. I don't think that he testified that; I think that was objected to by Mr. Johnson's att'y, and no answer made. The question was asked him, and objected to by Mr. Johnson's att'y, & no answer was made.

Ques. To a former question put to you you answered in substance that you thought Mr. Johnson testified that he come on to
154 those lands to live in July. May you not be mistaken in your recollection as to the month in which he stated he came up?

Ans. I think I am.

Ques. Do you remember of making an affidavit in the interest of Mr. Johnson containing a statement of your of what Johnson's testimony was at that contest to be used in Mr. Johnson's interest in obtaining a rehearing of his case at Washington?

Ans. I made an affidavit to that effect.

Ques. And for that purpose?

Ans. And for that purpose.

The witness is here shown a paper and he is asked the following question:

State whether this paper is that affidavit or not.

Ans. Yes, sir; that is my writing, and my signature affixed to the affidavit.

The witness' attention is here called to a statement in that affidavit on the second page thereof concerning when Mr. Johnson came on to the lands, when he went away, and how long he stayed thereon; and he is asked the following:

Ques. Have you read the statement to which your attention has just been called upon—request now made?

Objection. It is not proper or competent for the attorney to call the attention of the witness to any statement contained in his
155 affidavit either for the purpose of refreshing his recollection or making the affidavit or statement to which his attention has been called evidence in this case.

Ans. I have.

Ques. What have you now to say as to what Mr. Johnson's testimony was as to when he went on to these lands, &c., in view of what you have just read?

Objection, on the ground that it is not the best evidence, but that what Mr. Johnson testified to can only be shown — prove- by the production of the original affidavit or a certified copy, the loss or destruction of the original not having been shown.

2nd. That the witness is now called upon to testify not as to what he remembered but to what he now remembers, after having read his statement contained in an *ex-parte* affidavit made in the interest of the complainant.

Ans. Mr. Johnson stated that he came up in October and stayed until about Christmas.

Ques. Now, Mr. Bell, you was mistaken then in your recollection that he stated that he came in July?

Ans. I was.

Ques. And your recollection is refreshed by seeing your affidavit?

Ans. Yes, sir.

156 Objection. The above testimony was all taken subject to objection; that it was incompetent, irrelevant, and immaterial, and the same benefit of objection as though made at the time the questions were asked.

Cross-ex. by Mr. PRATT:

Ques. After the homestead trial at Traverse City of the Johnson homestead case, when was your attention first called to what Mr. Johnson had testified to upon that trial, and by whom were you first interviewed with reference as to what that testimony was?

Ans. I think it was in 1877—no, in 1878; after Mr. Bechtel was at Washington. He showed me the affidavit—that is, a copy of the affidavit—the one that came back, and I told him I didn't think that was a copy of the affidavit.

Ques. Mr. Bell, was that before you made this affidavit to which your attention has been called?

Ans. It was before I made the affidavit.

Ques. Who drafted the affidavit?

Ans. I drafted it myself and wrote it myself.

Ques. At the time you wrote this affidavit to which your attention has been called, did you have the copy of Mr. Johnson's evidence that Mr. Bechtel got in Washington before you?

Ans. I did; that is, I didn't have it before me; I had read it over before.

Ques. Do you remember the date of that affidavit

157 Ans. I think it was in June, 1878; I am not certain. It was in 1878 some time.

Ques. Mr. Bell, can you now state what Mr. Johnson's testimony was in full, as he gave it, on the homestead trial?

Ans. I don't think I could, in full, as he gave it.

Ques. State when he said he first went on to the land after he made his entry.

Ans. I think it was in September; I wouldn't be certain about it. I think he was on the land in the spring.

Ques. What, if anything, did he say in giving his testimony in reference to his family?

Ans. I don't remember.

Ques. What, if anything, did Mr. Johnson say about the value of the improvements that he had made on the place?

Ans. I think it was in the neighborhood of four or five hundred dollars.

Ques. Did he state at that time how long he had been on the place altogether, between the date of the entry and the time of the trial?

Ans. I think he did.

Ques. What length of time did he state?

Ans. He stated that he was there three months out of eight.

Ques. State whether upon that trial Mr. Johnson was asked the question whether there was any bargain between him and Mr. Stauffer, by which Mr. Stauffer was to have this land.

Ans. There was such a question asked.

Ques. What was his reply?

158 Ans. Well, it was, in substance, that he got the land for his own use, and hadn't got it for Mr. Stauffer's benefit.

Ques. You testified on that land trial?

Ans. I did, sir.

Ques. At that time what was your evidence as to the amount of land that had been cleared off, and how much it was worth?

Ans. I think it was in the neighborhood of twelve acres; I can't remember exactly; there was about three acres that was fenced in, and the bal- of it was under-brushed, and some of it was burned and some was not. I think I put it that it was worth from four to six hundred dollars; the improvements I mean.

Ques. After you gave your testimony on the trial, was it read over to you?

Ans. It was.

Ques. So that you understood it?

Ans. It was.

Ques. Did you then sign it?

Ans. I did.

Ques. Did you hear the testimony of Mr. Johnson read over to him?

Ans. I did.

Ques. By whom?

Ans. By Mr. Moffat.

Ques. Was it read so he could understand it?

Ans. I think it was.

Ques. Any more reasons why you should remember what Mr. Johnson's testimony was or was not than there is of your

159 remembering your own testimony?

Ans. Yes, sir.

Ques. What reason is there?

Ans. I was paying more attention to Mr. Johnson's testimony; they only asked me three or four questions; I think they asked me about the valuation, but it might have been of one of the other witnesses, it was so long ago.

Ques. Do you remember what your testimony was about there having been some fence built on the place after the making of the complaint?

Ans. I do not.

Ques. Is there any more reason why you should be able to to tell us what Mr. Johnson didn't swear to, than there is that you should correctly repeat or remember what he did swear to?

Ans. Well, sir, it was brought to my attention by some points that I paid particular attention to; I wanted to remember them, and I did remember them, because I expected there would be a fietgt.

(N. B. I think that last word, "fietgt," means fight, but I can't tell from the original. Signed Emmet Co. clerk.)

Ques. Do you think it possible that you could be mistaken about it, his not testifying that he intended this land for his son-in-law?

Ans. He didn't testify to that; no, I am not mistaken in regard to that; I can give the testimony pretty nearly as he gave it.

160 Ques. Was your attention called to his testimony between the date of the trial in Sept., 1876, and about the 12th of Feb., 1878?

Ans. No; I hadn't been; but I remembered what the testimony was about that time.

Ques. You are positive that you can't be mistaken in reference to this matter?

Ans. I am.

(Signed) JAS. BELL.

Taken & subscribed & sworn to before me, this 24th day of June, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

A paper is here offered in evidence as a joint exhibit by the parties purporting to be a certified copy of the testimony of complainant, as reported by the register of the Traverse City land office, to the Commissioner of the General Land Office at Washington, which is herewith attached and returned, marked Joint Exhibit "A."

Complainant here introduces in evidence a paper showing the reasons given by the Secretary of the Interior, Carl Schurz, for the decision he made in the case of the contest between complainant and defendant concerning the land in question, which paper bears date 17th May, 1877, and is signed "C. Schurz, Secretary,"

161 and is herewith returned, marked Exhibit B. Received in evidence by consent.

Case adjourned here till to-morrow, June 25th, at 9 o'clock a. m.

JUNE 25.

Cause called and took a recess till to-morrow, June 26th, 1880.

JUNE 26TH, 1880.

Cause called.

A witness produced, sworn, and examined on the part and behalf of the complainant and examined by his counsel, testified as follows:

Ques. Please state your name, age, & occupation.

Ans. Name, William R. Bowser; age, 35 years; occupation, county clerk of Emmet Co., Mich.

Ques. Where do you reside?

Ans. In Little Traverse.

Ques. How long have you lived there?

Ans. It will be six years the coming November.

Ques. When you first came into this county where did you begin your residence?

Ans. Two and a quarter miles east of Little Traverse.

Ques. Were there many other white settlers in that part of the Co. at that time?

Ans. There were very few.

Ques. Are you acquainted with complainant, Enos Johnson?

A. I am.

Ques. How long have you been acquainted with him?

Ans. Since about the 14th of April, 1875.

Ques. Where did you first meet him?

162 Ans. In Traverse City, Michigan; at least that is my impression that I met him there in Traverse City.

Ques. Do you know the lands about a mile north of the village of Little Traverse of which Mr. Johnson entered under the U. S. homestead act?

Ans. I do.

Ques. How long since you saw them?

Ans. Three weeks.

Ques. Have you been engaged in taking any portion of the U. S. census in this country of late?

Ans. I have.

Ques. Do you remember of hearing of the fact that Mr. Johnson had entered the lands in question under that homestead act?

Ans. I do.

Ques. State your recollection as to when you first heard that fact.

Ans. I think it was the day the land came in market at Traverse City; I think April 14th, 1875.

Ques. Do you remember of hearing the fact that afterwards Mr. Johnson went on to the lands to live?

Ans. I did; I do remember it.

Ques. State your recollection as to when Mr. Johnson went on to these lands first; to live there, I mean.

Ans. I think in the fall of 1875; I was not by there untill

163 the spring of 1876; I heard of his going on there.

Ques. What time in the spring of 1876 was it you were by there?

Ans. I think the last of May.

Ques. Were there any improvements on these lands then?

Ans. There was.

Ques. Did any one live there?

Ans. They were at work on the place; can't tell whether any one lived there or not.

Ques. Who was at work there on the place?

Ans. I think Mr. Johnson, Mr. Stauffer, and Mr. Bechtel.

Ques. What were they doing?
Ans. They were building fence that day.
Ques. Was there any house on the land?
Ans. My impression is there was.
Ques. When did you go in the village of Little Traverse to live?
Ans. Oct. 1st, 1879.
Ques. Do you know the defendant, William H. Lee?
Ans. I do.
Ques. How long have you been acquainted with him?
Ans. I cannot tell whether since the spring of 1877 or the spring of 1876; I can tell the circumstances, but can't tell the dates.
Ques. When you first became acquainted with him what was he doing; what was his business?
Ans. He was working in the store of William E. Parker.
164 Ques. What did he do in the store?
Ans. Keeping books & clerking.
Ques. Did he act as salesman in the store?
Ans. He did.
Ques. Now, do you remember of hearing the fact that these lands of Johnson's were advertised as being abandoned?
Ans. I heard of it.
Ques. Soon after the advertisement was made?
Ans. Yes, sir.
Ques. During the period of the time of your first acquaintance with Mr. Lee and the time of that advertisement what was his business?
Ans. He was working for Mr. Parker.
Ques. In the same business you mentioned?
Ans. Yes, sir.
Ques. Were you well acquainted during that period of time with the people and the No. of people—white people—resident of the township of Little Traverse?
Ans. I was pretty well.
Ques. Well, sir, within a circuit of, say, a mile and a half or two miles around that village to the west, north, and east, what, in your judgment, was the white population, outside of that village, during the period of time I have referred to?
Ans. Less than fifty.
Ques. What was the business of W. E. Parker done in the store to which you have referred to?
Ans. General dealer, and, I think, he handled wood.
165 Ques. When you say general dealer what do you mean?
Ans. A general dealer in groceries, merchandise, laths, &c.
Ques. Was that store the leading store in Little Traverse at that time?
Ans. It was.
Ques. Witness, is it not a fact that during that period of time when there was so small population and the country new, about every man you met, that was a resident, knew where every other resident lived, and more or less of his circumstances, and what he was doing?

Ans. Name, William R. Bowser; age, 35 years; occupation, county clerk of Emmet Co., Mich.

Ques. Where do you reside?

Ans. In Little Traverse.

Ques. How long have you lived there?

Ans. It will be six years the coming November.

Ques. When you first came into this county where did you begin your residence?

Ans. Two and a quarter miles east of Little Traverse.

Ques. Were there many other white settlers in that part of the Co. at that time?

Ans. There were very few.

Ques. Are you acquainted with complainant, Enos Johnson?

A. I am.

Ques. How long have you been acquainted with him?

Ans. Since about the 14th of April, 1875.

Ques. Where did you first meet him?

162 Ans. In Traverse City, Michigan; at least that is my impression that I met him there in Traverse City.

Ques. Do you know the lands about a mile north of the village of Little Traverse of which Mr. Johnson entered under the U. S. homestead act?

Ans. I do.

Ques. How long since you saw them?

Ans. Three weeks.

Ques. Have you been engaged in taking any portion of the U. S. census in this country of late?

Ans. I have.

Ques. Do you remember of hearing of the fact that Mr. Johnson had entered the lands in question under that homestead act?

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Ques. Do you remember of hearing the fact that afterwards Mr. Johnson went on to the lands to live?

Ans. I did; I do remember it.

Ques. State your recollection as to when Mr. Johnson went on to these lands first; to live there, I mean.

Ans. I think in the fall of 1875; I was not by there until

163 the spring of 1876; I heard of his going on there.

Ques. What time in the spring of 1876 was it you were by there?

Ans. I think the last of May.

Ques. Were there any improvements on these lands then?

Ans. There was.

Ques. Did any one live there?

Ans. They were at work on the place; can't tell whether any one lived there or not.

Ques. Who was at work there on the place?

Ans. I think Mr. Johnson, Mr. Stauffer, and Mr. Bechtel.

Ques. What were they doing?
Ans. They were building fence that day.
Ques. Was there any house on the land?
Ans. My impression is there was.
Ques. When did you go in the village of Little Traverse to live?
Ans. Oct. 1st, 1879.
Ques. Do you know the defendant, William H. Lee?
Ans. I do.
Ques. How long have you been acquainted with him?
Ans. I cannot tell whether since the spring of 1877 or the spring of 1876; I can tell the circumstances, but can't tell the dates.
Ques. When you first became acquainted with him what was he doing; what was his business?
Ans. He was working in the store of William E. Parker.
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Ans. Keeping books & clerking.
Ques. Did he act as salesman in the store?
Ans. He did.
Ques. Now, do you remember of hearing the fact that these lands of Johnson's were advertised as being abandoned?
Ans. I heard of it.
Ques. Soon after the advertisement was made?
Ans. Yes, sir.
Ques. During the period of the time of your first acquaintance with Mr. Lee and the time of that advertisement what was his business?
Ans. He was working for Mr. Parker.
Ques. In the same business you mentioned?
Ans. Yes, sir.
Ques. Were you well acquainted during that period of time with the people and the No. of people—white people—resident of the township of Little Traverse?
Ans. I was pretty well.
Ques. Well, sir, within a circuit of, say, a mile and a half or two miles around that village to the west, north, and east, what, in your judgment, was the white population, outside of that village, during the period of time I have referred to?
Ans. Less than fifty.
Ques. What was the business of W. E. Parker done in the store to which you have referred to?
Ans. General dealer, and, I think, he handled wood.
165 Ques. When you say general dealer what do you mean?
Ans. A general dealer in groceries, merchandise, laths, &c.
Ques. Was that store the leading store in Little Traverse at that time?
Ans. It was.
Ques. Witness, is it not a fact that during that period of time when there was so small population and the country new, about every man you met, that was a resident, knew where every other resident lived, and more or less of his circumstances, and what he was doing?

Ans. Well, we knew pretty nearly every man, but I didn't know where every man lived; I didn't run around enough.

Ques. When it was known that Johnson was advertised, state, so far as you know, what was the general public feeling about it.

Obj., on the ground of being hearsay.

Ans. So far as I know the feeling was against Mr. Lee.

Ques. Against Mr. Lee. What do you mean by that; what was the general expression?

Ans. That he should not have advertised the land.

Ques. Well, sir, was it not generally known in that region of country I have named and understood at the time Mr. Lee
166 made the complaint, upon which that advertisement was based, that Johnson was then actually living upon the land with his wife?

Obj., as hearsay.

Ans. I don't remember as regards his wife; as regards himself, I think it was.

Ques. Did you hear it frequently spoken of as a fact?

Obj. same as before.

Ans. I did.

Ques. After the decision of the case at Washington, who, if any one, circulated a petition in behalf of Johnson to the Commissioner at Washington asking for a rehearing of that case?

Ans. I did.

The witness is here presented a paper, and he is asked the following:

Ques. State whether that is the petition to which you refer in your testimony.

Ans. It is; I think it is the same one.

Ques. Have you any doubt of it?

Ans. No, sir; I have no doubt of it.

Ques. After the signing of this petition what did you do with it?

Ans. I sent it to the Commissioner at Washington.

Ques. Do you mean the Commissioner of the General Land Office at Washington?

Ans. Yes, sir.

167 The petition is here offered in evidence by complainant's solicitor, which is addressed "to the Hon. Commissioner of the Gen'l Land Office of the U. S. of America at Washington, D. C.," and consists of writing & signatures of six papers and thirteen lines of common legal-cap paper, and is herewith returned, marked Exhibit "C."

Objected to by defendant's counsel, as being incompetent, irrelevant, & immaterial, containing upon its face statements that are false and untrue, and is merely hearsay of the worst and most contemptable kind.

Ques. Are you acquainted with A. S. Lee, the reputed brother of the defendant?

Ans. I am.

Ques. During the period of time to which your attention has been called or a portion of it, did he live in this county?

Ans. I understood that he did; but I was not acquainted with him.

Ques. What was his reputed business during that time?

Ans. I think he was in Petoskey, a land agent.

Ques. Did you ever have any conversation with A. S. Lee in regard to the transactions by means of which Johnson was deprived of these lands in question?

Ans. Not that I remember of.

168 Ques. Do you know whether in the course of his business as such land agent he had more or less occasion to and did go over this country, acquainting himself with the descriptions and the character of lands?

Ans. I do not.

Ques. Was you somewhat well acquainted with W. H. Lee while he was acting as a clerk for Parker?

Ans. Just as a man would become acquainted with a salesman in dealing with him.

Ques. In dealing with him did you find him as clerks usually are—sociable and talkative with his customers?

Ans. So far as I am concerned he was.

Objection to, as being incompetent, irrelevant, & immaterial, and taken with the same benefit and advantage as though taken at the time the questions were asked.

Cross-ex. by Mr. PRATT:

Ques. When did you first go on to this land called the Johnson homestead?

Ans. I think in May, 1876.

Ques. Did you find any one residing upon the land at that time?

Ans. I found men at work on the land, but did not go by the house on the land; do not remember seeing it.

169 Ques. Did you ever see the house that you say in your petition that Mr. Johnson built?

Ans. Yes, sir.

Ques. When did you first see it?

Ans. I can't tell. I went by there frequently after that.

Ques. Did you ever see it prior to May, 1876?

Ans. My impression is that I did not go by the land until that time. I may have done so, but I think not.

Ques. Do I understand from your answer, Mr. Bowser, that you had not seen the house that was erected upon the Johnson homestead until after the month of May, 1876?

Objected on the ground that it is incompetent for a any person to tell what another person understands.

Ans. I have nothing here to refresh my memory with at all, and

had nothing to do with matters for between three & four years. My impression is that I did not see the land until May, 1876; I did see the land & the house & a family living in the house before the petition was signed, and knew that it was true at that time, whatever that date may be.

Ques. From what source did you derive your information that Mr. Johnson had built, or caused to be built, in the month of May or June, 1875, a house upon his homestead lands?

170 Ans. I don't know anything about any such thing. I don't suppose there was any such house there then.

Ques. From what source, Mr. Bowser, did you learn Mr. Johnson went upon his homestead in Oct., 1875, on the 5th day of that month, and lived there for the next three months, building outbuildings and getting house in shape for his wife, who was an invalid?

The complainant's solicitor here requests the commissioner to insert the following memoranda, to wit, that the last question above propounded by the defendant's counsel, and the question immediately preceding it, were framed by him from the petition put in evidence, marked Exhibit "C," without first giving the witness the opportunity to examine and read the contents of such petition, and though the witness requested of the counsel the use of the paper to refresh his recollection, yet, though the counsel had the paper in his hands, he refused the witness the opportunity of so refreshing his recollection. The defendant's counsel requests the commissioner to state that counsel refused to allow the witness to use Exhibit "C" to refresh his recollection, but didn't object or refuse to read Exhibit "C" to the witness, but upon the aforesaid objection being made did proceed and read Exhibit "C" to the witness before he was

171 requested or required to answer the question last above, to which the learned counsel for complainant have objected; counsel for complainant here requests the counsel for the defendant to present the petition to the witness before answering, which the defendant's counsel refused to do; counsel for defendant here proceeds to read the paper put in evidence and marked Exhibit "C." Defendant's counsel asked the witness:

Ques. From the reading of that petition, witness, do you think I have read it correctly or not?

Ans. I should presume so; of course, as to the dates, I don't know anything about them.

Ques. Since you have heard this petition read, will you state whether it changes your recollection of the time when you first saw this house that Mr. Johnson had erected, or caused to be erected, upon his homestead?

Ans. I don't think myself that I ever saw their house, or was across the land before that time, in May, 18—.

Ques. State whether you knew, from personal knowledge or from hearsay, when this house was built.

Ans. From hearsay.

Ques. Did you know, of your own personal knowledge or only

from hearsay, the fact of Mr. Johnson going on to his home-
172 stead the 5th of Oct., 1875, and living there for the next three months, building outbuildings & getting his house in proper condition for his wife, who was an invalid?

Ans. I knew of his coming here at about that time and remaining in the county for that length of time, and took it for granted that he was living there, as I saw him frequently; the rest I know only by hearsay.

Ques. State whether you knew from your own personal knowledge or only from hearsay the fact that Mr. Johnson's wife went on to this homestead in June, 1876, and remained thereon till about the 1st of Oct., and that she had to return to the southern portion of the State during the winter on account of her health.

Ans. I could not state as to the date as to her being there, and staying there I know of my own personal knowledge; the rest is hearsay.

Ques. Do you know, Mr. Bowser, who of Mr. Johnson's family was living with him on this homestead in June, 1876, at the time it was advertised?

Ans. I think his daughter and her husband and their family; after that I do not know whether Mrs. Johnson was there or not.

173 Ques. At that time, Mr. Bowser, I mean at the date when the homestead was advertised, state whether Mr. Johnson had any household goods or stock of any kind on the homestead.

Ans. I don't know anything about who owned the goods.

Ques. Mr. Bowser, you stated that you circulated this petition marked Exhibit "C," did you?

Ans. I did.

Ques. I find the name of Lewis Johnson signed to this petition; was you acquainted with him?

Ans. I was.

Ques. State where he resided at the time this petition was circulated and signed, and how far from this homestead in question.

Ans. I think he was staying at the house of Elijah Pope; I think I obtained his signature there; I think it was about three miles or three miles and a half; I think it was about that.

Ques. How long had Mr. Johnson been living in the vicinity of this land at the time he signed this petition?

Ans. I cannot tell.

Ques. Was he a permanent resident in the vicinity of this land?

Ans. My impression is that he had advertised a homestead and was waiting for it to be cancelled to make an entry on it.

Ques. I want an answer to the question.

Ans. I considered him as such; he came here to stay, and has stayed ever since—is a permanent resident.

Ques. Was this man a resident of Little Traverse township in 1875?

Ans. I didn't know anything about Lewis Johnson in 1875.

174 Ques. Did Lewis Johnson, whose name is signed to Exhibit "C," reside in Little Traverse township in 1876?

Ans. He did a part of the time, and a part of the time in the town of Pleasant View.

Ques. What time in 1876 did Mr. Johnson—Lewis Johnson—the man whose name is attached to Exhibit "C," reside in Little Traverse township?

Ans. He worked in Little Traverse township during the months of July & August; these dates are to the best of my recollection, and if I had my books here I could give them exactly.

Ques. Was it in the year in which you obtained his signature to this petition, or the year before, that he worked in Little Traverse during the months of July & August?

Ans. It was the year that I obtained his signature to that petition.

Ques. State, Mr. Bowser, what time in the year that it was, as near as you can, that you circulated this petition.

Ans. It was in planting time.

Ques. Was it before or after Mr. Lee had entered these lands as a homestead?

Ans. From the reading of the petition, it must have been after; I do not remember anything about that.

Ques. State whether or not you ever circulated more than one petition to obtain a rehearing of the Johnson homestead trial.

Ans. I don't remember now.

175 Ques. The petition which you circulated, and to which you obtained signatures, was it sworn to by the parties subscribing to it, or not?

Ans. I do not remember whether it was considered as an affidavit or not.

Ques. Are you positive, Mr. Bowser, that the petition you circulated to obtain a rehearing in Mr. Johnson's homestead cause was circulated during planting time in the spring of the year?

Ans. I am quite certain parties were planting when I circulated it. It was late planting, but I am quite positive.

Redirect:

Ques. In your cross-ex. you stated substantially that you didn't see any house upon the homestead in May or June, 1875, and you didn't think there was any there; as a matter of fact, you don't know whether there was one there or not?

Ans. I do not.

(Signed) WILLIAM R. BOWSER.

Taken, subscribed, & sworn to before me, this 26th day of June, 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

176 Another witness produced, sworn, and examined on the part and behalf complainant testified as follows:

My name is Sylvester W. Ingalls.

Ques. What is your age, occupation, and where do you reside?

Ans. My age is 32; occupation, a farmer, and I reside in the township of Friendship, in this county.

Ques. How far from Little Traverse village?

Ans. About four miles.

Ques. Are you acquainted with the parties in this case?

Ans. I am.

Ques. Do you remember of the fact that Mr. Johnson's homestead entry of the lands in question in this suit had been advertised on the complaint of def't Lee?

Ans. I do.

Ques. Did you ever have any talk with def't Lee about it?

Ans. I have.

Ques. When was it?

Ans. Some time in that year, 1877; I couldn't tell what part of the year; it might have been some time in '76 that I had the talk with him; I wouldn't be certain.

Ques. Was it soon after the advertisement was made that you had the talk?

Ans. It was after the land was advertised, but I couldn't say how long after.

177 Ques. State the conversation you then had with him; what you both said, as near as you can recollect it.

Ans. I don't know as I can tell the exact words, but I can tell you the substance of it. I told him that I thought it was wrong to advertise poor people after they had taken homesteads, and were doing what they could to fill the law. His reply was, that he didn't believe in advertising poor people himself, but he knew who he was advertising, and if he lost it, was able to stand it.

Ques. Did he say anything about having picked his man, or any words to that effect?

Ans. Nothing, only that he knew him, and knew that he wasn't poor—knew that he was able to stand it.

Ques. If he lost the homestead?

Ans. Yes.

Ques. In that conversation was anything said about the improvements Johnson had made?

Ans. I don't remember that there was.

(Signed) SYLVESTER W. INGALLS.

Taken, subscribed, and sworn to before me, this 26th day of June, 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

178 Another witness produced, sworn, and examined on the part and behalf of complainant testified as follows:

Ques. Your name, age, and occupation, & place of residence?

Ans. George L. Smith; Little Traverse, Emmet Co.; age, 58; for the last six years have been keeping a public house.

Ques. Are you acquainted with the parties to this case?

Ans. I am.

Ques. How long have you been acquainted with the defendant Lee?

Ans. It is about four years, if my memory is right.

Ques. Where did you keep public house?

Ans. I kept in Petoskey about a year or a year and a half; the balance of the time in Little Traverse.

Ques. Do you remember of hearing the fact of Mr. Johnson's homestead lands being advertised on the complaint of defendant Lee?

Ans. I do.

Ques. Did you know where these lands were yourself?

Ans. I do know.

Ques. Did you ever have any talk with the defendant Lee about the lands in question, and what he had done concerning them?

Ans. Yes; I had some talk with him.

Ques. Did you know anything about the improvements on these lands?

Ans. Yes; I have seen them.

Ques. State whether in your talk with Mr. Lee you under-
179 stood that he knew the lands and the improvement thereon.

Ans. Yes; he showed me the improvements.

Ques. What was your talk with him? State the conversation as near as you can recollect it.

Ans. As near as I can remember, the first conversation was: I asked him if he had succeeded in getting his case; that was just after he came from Traverse City. Yes, he said, he had got it. I told him that I thought it was a pity for Mr. Johnson to lose his land. He said he didn't advertise it for quite a spell after he was advised to, but there were other parties that were going to advertise it, and he thought he might as well advertise it as any one else. That was the substance of that conversation at that time.

Ques. Did he say who advised him to advertise it?

Ans. I don't think he did.

Ques. How soon after the trial at Traverse City was it that you had this conversation?

Ans. Well, I don't remember exactly, but I guess it was about two weeks.

Ques. When was it that he showed you the improvements?

Ans. The next summer after it was advertised.

Ques. Did he state anything about how or when he ascertained about the land, so as to make the complaint?

Ans. He did not.

(Signed) GEO. L. SMITH.

Taken and subscribed & sworn to before me, this 26th day of June, 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

180 Cause called at nine o'clock a. m., June 28th, 1880.

CHARLES W. INGALLS, a witness, produced and sworn by me & examined by complainant's solicitor, testified as follows, that is to say:

Ques. State your name, age, residence, & occupation.

Ans. My name is Charles W. Ingalls; I reside at Little Traverse, Emmet county, State of Michigan; age, 68 years old; my occupation, dealer in land.

Ques. Are you acquainted with the parties in this case?

Ans. I am somewhat.

Ques. How long have you been acquainted with defendant Lee?

Ans. Really I cannot tell the exact length of time, I should think about three years; I can't tell the exact time.

Ques. Are you acquainted with the land about a mile north of Little Traverse which the complainant Johnson entered under the homestead law?

Ans. I am.

Ques. How long since you saw them?

Ans. I have been right along near them within a very short time.

Ques. Were you acquainted with them while Mr. Johnson was living on them?

Ans. I was.

Ques. Did you ever see him there?

Ans. I have.

Ques. When?

Ans. I saw him *at* quite a number of times.

181 Ques. Do you remember of hearing of the fact that these lands were advertised as abandoned by the complain-t on the complaint of the defendant Lee?

Ans. I do.

Ques. Had you seen Mr. Johnson on those lands before that time?

Ans. I had several times.

Ques. Did you see Mrs. Johnson there?

Ans. I never was in the house when she was up there; I have seen her when she was up here, but never seen her in the house.

Ques. Did you ever have any talk with defendant Lee concerning what he had done in getting the advertisement of these lands?

Ans. I had a talk with Mr. Lee once, while he was clerking in the store of Mr. Parker, relative to it.

Ques. Go on and state the whole of that conversation, as near as you can recollect it.

Ans. It was during the time of the pending of this action of his advertisement before it was returned; the words that either of us used is foreign to my memory, the words that we used particularly. I complained to Mr. Lee that I thought it was wrong to advertise Mr. Johnson; he seemed to think that he was right in so doing; he, Mr. Lee, had been recommended to advertise him, and should

be willing to abide the result; that was about all the conversation there was between us.

182 Ques. Did he claim to know personally anything about the lands, or whether, as a matter of fact, Johnson had abandoned them when he made his complaint?

Ans. The conversation between us was this: That I complained of about Johnson doing so much work; building so much fence, in laying out so much in improvements. His answer was this, he thought he should prove, or had proved—I think he had been at Traverse City; that he had been absent so much from the place that he had not fulfilled the law.

Ques. Now, will you answer the question?

Ans. From his conversation, I thought he was familiar with the facts of the case: with his, Johnson, improving the place, and living thereon.

Objection. The above testimony is objected to by the defendant's solicitors, on the ground of its — irrelevant, incompetent, and immaterial, and taken subject to the same benefit of objection as though taken at the same time the questions were asked.

(Signed) CHARLES W. INGALLS.

Taken, subscribed, and sworn to before me, this 28th day of June, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

183 Cause called pursuant to adjournment, at nine o'clock a. m., June 29th, 1880.

JOHN H. STANDISH, another witness produced, sworn, and examined on the part and behalf of the complainant, testifies as follows, to wit:

Ques. What is your age and occupation?

Ans. Age, 59 years; occupation, an attorney and solicitor.

Ques. Where do you reside?

Ans. At Muskegon, Michigan.

Ques. Are you acquainted with Enos Johnson, the complainant in this case?

Ans. I am.

Ques. State whether you was employed by him, and in his behalf conducted a contest on the 19th of September, 1876, at the United States land office at Traverse City, Mich., with one Wm. H. Lee, relative to the homestead claim of Enos Johnson for the west half of the northwest quarter, and the northeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter of section seven, in township thirty-five north, range five west, in this State.

Ans. I was employed by him to conduct a case in his contest there at that time, but the description of land as read I am not certain about; it related, however, to a homestead entry numbered 6681.

Ques. By and before whom was that contest conducted?

184 Ans. Seth C. Moffatt; at that time, I think, register of the land office.

Ques. State whether the complainant, Enos Johnson, in that contest, was a witness in his own behalf.

Ans. Yes, sir; I understand it is the same man that is complainant in this case.

Ques. State whether, in a giving of his testimony at that time and place, Mr. Johnson testified and swore as follows: "I have intended to give him (Robert Stauffer, his son-in-law,) the land (the land entered by Johnson as a homestead meaning) when I get my title."

Objected to, on the ground that it is incompetent, irrelevant, and immaterial.

Ans. There was no such testimony given in my hearing by Mr. Johnson during the progress of that examination.

Ques. Did you conduct that examination to its close?

Ans. I did.

Ques. Was there anything said by Mr. Johnson at that time and place, or in a giving of his testimony in that subject; if yea, state what he did say?

Objection same as above.

Ans. There was something said by him in giving his testimony in regard to his intention in homesteading the land described, and the ultimate disposition which he might make of said land,

185 Speaking of the son-in-law Staffer, Mr. Johnson said that he, Stauffer, had no interest in said homestead by contract or otherwise, and that although he, Johnson, might eventually give said homestead to said Stauffer, he was under no contract to do so, and that he had not homesteaded the same for that purpose, or for any purpose, except to make himself a home during his natural life.

Ques. In that contest did Mr. Johnson testify and swear as to any particular number of months that he had resided on the land subsequent to the date of his entry?

Objection as above.

Ans. He did not state the number of months.

Ques. What was his testimony as regards to his residence on the land; how long he had not been absent from it at any one time subsequent to his entry? State as near as you can recollect.

Objection same as above.

Ans. My best recollection is that Mr. Johnson gave the time at which he built a shanty upon the land, then the fact that he made his homestead entry, and that subsequent to the making that homestead entry, and within six months, he caused improvements to be made upon the land, or a continuation of the improvements

186 which he had commenced; he then testified as to the condition of his wife, he swore that he took up his residence on the land, residing with his son-in-law, and that such residence with

his son-in-law was within six months after said entry; that he continued to reside upon said land to about the 24th day of December, 1875. He then returned to his home in Kent county, and engaged in taking care of his invalid wife up to some time in February next ensuing, Feb'y, '76; that he then returned to his homestead in Feb., '76, and remained a few weeks; that at the end of a few weeks he returned back to Kent county, and remained in taking care of his wife until the following June; that he then returned to his homestead and engaged in making further and perma-nt improvements on said homestead land; stated that he had not been absent from that homestead six months at any one time prior to its being advertised by Mr. Lee.

Ques. Did he state where he and his wife resided at the time that Lee made the complaint?

Ans. He did.

Ques. Where?

Ans. On the homestead tract of land in Emmet county, Michigan, alluded to.

Ques. Now, in the giving of his testimony, both at that
187 time and place, did Mr. Johnson swear and testify that he voted in the spring of that year at Gaines, Kent county, Michigan?

Objection; same as above.

Ans. I should think that he did not swear that he voted in the township of Gaines in that spring election.

Ques. That is your recollection?

Ans. Yes, sir; that is my recollection that he did not so swear.

Ques. Do you remember of hearing of the facts that subsequent to that contest the Commissioner of the General Land Office at Washington decided the contest in favor of Mr. Johnson; that an appeal was taken from his decision by Mr. Lee to the Secretary of the Interior, who reversed the decision of the Commissioner?

Ans. I received a communication from the Commissioner of the Land Office at Washington advising me that such were the facts.

Ques. Now, state whether, in behalf of Mr. Johnson, you took any steps to obtain a hearing of his case at Washington.

Ans. I did made a move in that direction.

Ques. And state whether or not your reasons for a rehearing were based upon the facts that Mr. Johnson's testimony had been wrongfully reported to the Department at Washington from the land office at Traverse City?

Objection; same as last above.

188 Ans. I should have to answer that no, for the reason that I did not then know how it had been reported.

Ques. Did you correspond with the Secretary of the Interior concerning the decision he had made?

Ans. I did.

Ques. Did you receive from him any reply to your letter, accompanyed with a written statement of his decision of the case?

Ans. I did.

Ques. Who was Secretary of the Interior at that time?

Ans. We generally called him Carl Schurz.

Ques. Where is that letter from Carl Schurz and statement?

Ans. The letter and statement purporting to have come from Carl Shurz, the Secretary of the Interior, I hold in my hands here.

Complainant's solicitor introduces the said letter and the statement of the decision, which are received in evidence and marked Mutual Exhibit "A½," herewith returned, consisting of one page and seven lines of letter paper, and three alternate pages and ten lines of legal cap affixed together.

Cross-ex. by Mr. PRATT:

Ques. At the time of the trial at the United States land office at Traverse City, while Mr. Johnson was giving his testimony
189 before the land officers, and his testimony was being reduced to writing, did you take a memoranda of what Mr. Johnson said?

Ans. Upon certain points, I did.

Ques. State whether in giving your testimony you have stated only from recollection as to what took place and was said at that trial, or is your testimony based upon the minutes which you then kept of what was sworn to by Mr. Johnson and what took place before the land officers?

Ans. Upon two points my testimony is based entire; I should say entirely upon my recollection of what occurred at the land office in regards to dates, which he testified concerning his residence up here; in regard to his residence in Kent county, I relied principally upon my memoranda.

Ques. Upon what two points do you testify from recollection only?

Ans. In regard to what Mr. Johnson said about his intentions as to his disposal or disposition subsequently to be made of that homestead land is one; second, in relation to what he said in response to a question as to where he voted the previous spring, I think it was.

Ques. After Mr. Johnson had given in his testimony in that homestead trial, state whether or not it was read over to him by the register, and afterwards subscribed by Mr. Johnson.

190 Ans. My impression is that it was subscribed by Mr. Johnson, but it would rather be my impression that the substance Mr. Moffat claimed of was written down, was then stated to him by the register, Mr. Moffatt.

Ques. Did you compare the minutes that you had been taking of Mr. Johnson's testimony with what Mrs. Moffatt had written down as Mr. Johnson's testimony at that time?

Ans. I did not.

Ques. Have you since that time seen or heard, or heard read what purported to be the testimony, or a copy of the testimony that it is claimed Mr. Johnson gave on the land trial?

Ans. I never have seen it, nor heard it read, nor have never read it.

Ques. Did you take full minutes of Mr. Johnson's testimony, ex-

cept upon the two points that you say you testified to from recollection, and not from your memoranda?

Ans. I say that I did not take full minutes; I can tell you what I did do, and what points I did make in relation to the date of the entry, the improvements subsequently made, the time and times that Mr. Johnson swore that he was on the homestead, and the time and times that he was absent, and the reason of his absence on all these points; I made what I deemed to be a full, complete memoranda.

191 Ques. Can you state, Col., what he said as to the time he first went on to his homestead after he made his entry?

Ans. I think that he stated that his first entry upon the premises, after he made his homestead entry was in June—June following.

Ques. When did he say that he left, and how long did he state that he was on the land at that time—the time that you referred to?

Ans. I couldn't answer, from my memory, the length of time he said he stayed there, nor the precise date he said he left.

Ques. Didn't he state, in giving his testimony on trial before the United States land officers, "I am the respondent; I first saw the land in the fall of 1874; I bought five hundred feet of lumber and built a shanty on the land; I built it myself; I made my entry April 17th, 1875."

Ans. I should presume that substantially that is correct; it is the substance of what he did testify, and that besides the dates which, except by memoranda, I could not fix the date.

Ques. Does that statement that I have read to you correspond with the memorandum that you made of Mr. Johnson's testimony?

Ans. In substance, yes.

Ques. At the homestead trial did Mr. Johnson swear as follows:

192 "I sent my son-in-law up May 1st, 1875; he moved up; he was to work for me; I directed what he was to do; he cleared off the land and put up a house; he tore down the old shanty; I came up myself Oct. 5; I stayed until about Christmas; I made my home on the land; I was working on the land; I bought some lumber for house and fencing while I was there; there was no fencing done."

Ans. With some small exceptions, I should think that was correct; the exceptions I will name; I don't remember the date at which he said he sent his son-in-law up there, neither does this refresh my mind on that subject; neither am I certain as to his stating "that I came up myself Oct. 5;" my recollection is, he said he had been there some time in June following the homestead entry; the balance I should think substantially correct, although I have no recollection that his son-in-law pulled down the old shanty; the building the new house I do recollect.

Ques. Have you in your memoranda of Mr. Johnson's testimony anything to show the precise date when Mr. Johnson first went on to his homestead after he had entered it?

Ans. I imagine I have; I think I have.

Ques. Does this date or memoranda that you made at the time

that he first went on to the homestead agree with the evi-
193 dence that I have just called your attention to; that is, does your memoranda of his testimony show his first entry to have been made on the 5th of October, 1875?

Ans. My recollection is that my memoranda does not show that his first entry after the homestead entry was on the 5th day of October, 1875, but my memoranda does show that he entered on the premises within six months after the homestead entry was made.

Ques. In your memoranda of Mr. Johnson's testimony does it show the precise date in December, that Mr. Johnson left his homestead and returned to Gaines?

Ans. I have not examined the memoranda in reference to that point, hence I cannot state.

Ques. In giving your testimony on the direct examination, did you not state that Mr. Johnson removed from the homestead on the 24th of December, 1875, and, if so, was that testimony given from your own recollection or taken from your memoranda of Mr. Johnson's testimony?

Ans. I don't recollect that my attention was called to the time of Mr. Johnson's removal in my direct examination.

Objection is here interposed by complainant's solicitor, on the ground that the question does not correctly quote the testimony of the witness.

I think I thall let that stand as my answer.

194 Ques. In giving your testimony on the direct examination you stated many other things that Mr. Johnson testified on the homestead trial; that he left the homestead on or about the 24th of December, and returned to his home in Kent county. Was that testimony from your own recollection, or was it taken from the memoranda that you made of Mr. Johnson's testimony?

Ans. By reference to my testimony preceding that you have just read you will find that I testified that all the recollection I had of any testimony of Mr. Johnson, involving dates, I derived from a memoranda of what Mr. Johnson did testify to on that occasion.

Ques. Will you refer to your memoranda, Mr. Standish, and then state whether your memoranda shows the fact that Mr. Johnson did testify on the homestead trial that he left the homestead on or about the 24th day of December, and returned to his home in Kent county, Michigan.

Ans. My recollection is that my memoranda does disclose that, except with reference to the word "home," and I am inclined to think he said he returned to Kent county and took care of his wife. That is my recollection of the memoranda I made.

Defendant's solicitor requests this entry to be made, that the witness made this answer without referring to the memoranda he made.

195 Complainant's solicitor here desires the commissioner to record that he is not a witness, and that while his attention is directed to the recording the testimony, he is not observing or

watching the witness, and that he does not have an opportunity to do so.

Ques. In giving your testimony upon the direct examination did you or did you not have the memoranda that you made of Mr. Johnson's testimony before you, and did you not refer to that memoranda in giving your testimony?

Ans. I did not have the memoranda which I made at the time of the giving of the testimony of Mr. Johnson before Mr. Moffatt.

Ques. You have stated that you made a memoranda in reference to certain points that Mr. Johnson testified to at the homestead trial. Have you that memoranda, and did you refer to it in giving your testimony on your direct examination?

Ans. I have that memoranda—the original. I did not refer to that original in giving my testimony. I did testify to what that memoranda made by me disclosed.

Ques. In giving your testimony upon the direct examination did you or did you not hold in your hands a paper to which you referred in giving that testimony? If so, will you please state what it was?

196 Ans. I did hold in my hands a paper when giving my testimony. I did refer to that paper when giving my testimony. That paper contains the testimony which Mr. Johnson gave upon that examination upon the several points to which I testified, and to which I referred, taken from the original memoranda prepared, presented, and sent forward to the Commissioner of the General Land Office at Washington. It is a copy of it, and this which I now hold here or have here, or rather that is a copy of this, which I sent forward to the Commissioner.

Ques. Have you compared this copy of Mr. Johnson's testimony with your original memoranda since the time that you first made this copy? If so, state when.

Ans. I have compared it; the last that I compared this with the original memoranda was in violation of the law of the land, being done last Sunday, and first time that I compared it with the memoranda I should think was about—I couldn't give the precise date of that—it was about the date that this matter was appealed to the Secretary of the Interior; I don't remember the precise date of that; I don't find any date of that here; this was corrected by me, and a copy of it sent forward by me to the Commissioner; this is the original draft made by me; I looked over the memoranda that I marked at the examination, and sent a copy of this forward and retained this, which was more accidental than otherwise.

197 Ques. The memoranda that you referred to while giving your direct examination is a correct copy of the original memoranda that you made of Mr. Johnson's testimony at the homestead trial, is it?

Ans. No, sir; it is not.

Ques. In what respect does it differ from the original memoranda?

Ans. Only in the statement of facts which were disclosed by Mr. Johnson's testimony, as I took it in my original memoranda; this is a virtually a statement of facts, as exhibited by the testimony, as I

took it down in my memoranda book; this is a statement of the contents of the memoranda which I took down when Mr. Johnson testified before Mr. Moffatt that I hold here in my hands; these two papers.

Ques. Why in giving your testimony do you refer to this copy or statement of Mr. Johnson's testimony rather than to the original memoranda that you made at the time of the trial?

Ans. The question is assuming a fact that don't exist, in the first place, that I have a preference; I have none; that is all the answer that I have to make.

Ques. Why do you use or refer to this copy or statement of Mr. Johnson's testimony instead of the original memoranda?

Ans. Because I have the statement here, and not the original memoranda.

Ques. Referring to this copy or statement, does that show
198 the time that Mr. Johnson left the homestead and went to Kent county to be on or about 24th of December, 1875?

Ans. I will read, and that will be my answer.

Witness reads from a paper:

During the fall of 1875, and within six months after the said homestead entry, Johnson took up his residence on the land and aided his said son-in-law in clearing and improving the same up to the 24th day of December, 1875, at which time he returned to Kent county to look after his wife, who up to that time had been unable to move on to said homestead.

Ques. State whether, in giving this testimony, Mr. Johnson, at the homestead trial, testified as follows: "My family at this time was a wife, in Gaines, one boy, and some girls, and my son-in-law, above spoken of as being one of the family."

Ans. I think he did so testify, substantially.

Ques. Have you in your statement or copy of Mr. Johnson's evidence a statement to that effect; if so, will you read it?

Ans. I have not.

Ques. At the same trial did Mr. Johnson further testify as follows: "My wife's health from April, 1875, has been poor; I came up in March, 1876; I stayed two weeks; boarded with my son-in-law; did not do anything on account of snow"?

Ans. My memoranda shows that in February, 1876, John-
199 son returned to his homestead and remained a few weeks, when, owing to the depth of snow and his inability to perform work to any advantage, he returned to his old place, where he continued engaged in the care of his wife until the following June.

Ques. At the same trial did Mr. Johnson testify as follows: "I came up again in June, 1876; my wife's health was better, and she came with me, and we have lived there since"?

Ans. Mr. Johnson testified, according to my memoranda, that in June, 1876, he again returned to his homestead, and for a few weeks engaged in assisting his son-in-law, who had continued in his employ, in making further and permanent improvements on his said homestead; and further, at this last-mentioned period, Mrs. Johnson

had so far recovered as to be able to accompany her husband; he further testified, but not sufficiently recovered to take the charge of his house and perform and do household work; he further testified that she, however, remained with him on the homestead through the summer and until the complaint of Lee was made, and notice thereof served upon him, Enos Johnson, her husband.

Ques. At the same time and trial did Mr. Johnson testify:

200 "I have a farm in Gaines, Kent county; when I entered the land it was for the purpose of making a home. Mr. Lee & Pailthorp both advised me to get the additional homestead entries, as I did not get them. I worked on my place. I estimate the improvements on the place at the sum of two hundred dollars"?

Ans. My recollection of the testimony upon that point is that the subject of a farm was brought up, and my recollection is that objection was made that it had no bearing upon the case whether he owned a farm somewhere else, and so ruled upon by the register and rejected; and he did testify as to the improvements, and what they were worth. Johnson testified, among other things, that the house he built upon the land homestead was 16x20 feet in size, double boarded, and had shingle roof; that he had a stable 18x20 feet in size, and that he had a well dug and curbed up, and that he cleared and fenced and put in crops seven acres the first year, after making his entry, and that in 1876 he cleared and fenced three acres, making in all ten acres in cultivation, and that in the year 1876 he erected some sixty rods of board fence; that all this was done before the claim was advertised by Mr. Lee. He testified in relation to the value, according to my recollection, that I didn't make

201 any memoranda of, of the improvements made by him and his son-in-law, or some of them there. There was a small house that cost about one hundred dollars. I think, however, that he made a gross estimate of the whole value, but I have not got it on my memoranda, but he gave a detailed account of what the improvements were.

(Signed) JOHN H. STANDISH.

Taken, subscribed, & sworn to before me this 29th day of June, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public in and for Emmet County, Michigan.

The complainant, ENOS JOHNSON, being sworn in his own behalf, testifies as follows, that is to say:

Ques. Your age is—how old?

Ans. 66 years old.

Ques. Are you the complainant in this case?

Ans. Yes, sir.

Ques. Do you remember of being sworn and of testifying in your own behalf before Seth C. Moffatt at the contest at Traverse City with the defendant Lee concerning the lands in question in this case?

Ans. Yes, sir.

Ques. At that time and place did you testify and swear that you

intended, or had intended, to give these lands to your son-in-law Stauffer when you got your title to them?

Ans. No, sir.

202 Ques. Before that time, was there ever any contract, agreement, or some understanding between you and Stauffer that he was to have those lands, or any interest in them, after you got your title?

Ans. No, sir.

Ques. State whether at that time and place you testified and swore that you had lived on those homestead lands three months, or any number of months, after you had entered them.

Ans. No.

Ques. What was your statement at that time about being absent from those lands after you had entered them, at any one time?

Ans. I stated what time I went on and what time I left, and then what time I returned again, and stated that I was not off six months at any one time.

Ques. For what purpose did you enter those lands?

Ans. For me a home.

Ques. At that time and place, did you testify and swear that you had voted the spring previous at Gaines, Kent county, Michigan?

Ans. No, sir.

Ques. When did you first go on to these lands after you entered them?

Ans. In October, the same year I entered them.

Ques. How long did you stay there that time before you left?

203 Ans. Well, it was somewhere near Christmas; I couldn't state the date exactly.

Ques. State the date that you went on there in October.

Ans. I think it was the 5th.

Ques. Was it before or after Christmas of that year that you left?

Ans. I think that it was just before.

Ques. Did your wife go on to the land with you when you first went there?

Ans. No, sir.

Ques. Why not?

Ans. She was not well enough to go at that time.

Ques. Did you act on the advice of any physician in the matter of her not going?

Ans. Yes, sir.

Ques. What physician?

Ans. Mr. Wright.

Ques. The same gentleman who has testified in this case?

Ans. Yes, sir.

Ques. You say that you left just before Christmas, in 1875; state as near as you recollect when you again went on those lands to reside.

Ans. It was either the last of February or the first of March, 1876; I can't remember exactly which.

Ques. How long did you stay that time?

Ans. It was something like two or three weeks; I could not say for certain.

204 Ques. Where did you go when you went away that time?

Ans. I went to my family in Gaines.

Ques. When did you next come back on the land?

A. In June, 1876; on the 15th, I think.

Ques. Was your wife with you that time?

A. Yes, sir.

Q. How long did you remain there then?

Ans. Some time until the last of September or the first of October

Ques. Where were you and your wife living at the time Lee made the complaint of the abandonment of these lands?

Ans. On the homestead.

Ques. Who made the improvements on these lands or caused them to be made?

Ans. I did.

Ques, Did you have any one in your employ working for you?

Ans. Yes, sir.

Ques. Who was it.

Ans. Robert Stauffer.

Ques. State whether all that Robert Stauffer done on the land was as your agent and hired man?

Ans. Yes, sir.

Ques. What was the condition of your wife's health while she was living on the land?

Ans. Some days she felt pretty good, others she did not.

Ques. Mr. Johnson, did you make your settlement on that

205 land in good faith for yourself, or were you making it up for Robert Stauffer?

Ans. I made it for myself.

Ques. After the decision of your case at Washington, did you try to get a rehearing of it?

Ans. Yes, sir.

Ques. How soon did you begin to try to get that rehearing?

Ans. Well, that I can't tell just exact.

Ques. Was it soon after you hear the decision was against you?

Ans. Yes.

Ques. Did you send any papers to Washington for that purpose?

Ans. Yes, sir.

Ques. What papers did you send; state, as near as you recollect.

Ans. Well, I couldn't say just exact whether I had Mr. Standish write a letter or whether it was a petition sent there first.

Ques. Well, did you send affidavits showing that the report of the register of the land office was false in that it represented you as having sworn to things that you did not swear to?

Ans. Yes, sir.

Ques. State whether you employed attorneys in your behalf at Washington?

Ans. Yes, sir.

Ques. At whose cost and expense were the buildings put upon those homestead lands?

Ans. Mine.

206 Ques. Did you personally labor on those lands when you lived there?

Ans. Yes, sir.

Ques. Did you actually live thereon when you was there during the periods of time you have named?

Ans. Yes.

Ques. State, as near as you can, how much all the improvements you made upon these lands cost you.

Ans. I laid out three hundred dollars.

Ques. Up to the time it was advertised?

Ans. Yes, sir.

Ques. Was that over and above the value of Stauffer's work, or in that amount of cost do you include value of Stauffer's services?

Ans. I included Stauffer's services, but not my own.

Ques. Had you seen the defendant Lee before he advertised your homestead land?

Ans. Not that I know of.

Ques. Had you traded at Parker's store any before that time?

Ans. I think I was there once.

Ques. What was the condition of your wife's health during the winter of 1875 and 1876?

Ans. Some days it was good, and some days it was bad; that was the way it was all along.

Ques. Troubled with the complaint Dr. Wright spoke of?

Ans. Yes, sir.

Ques. Was that the reason she left these land- and went back in September or October, 1876?

Ans. Yes, sir.

207 Ques. Was that the reason why you didn't come on to the land with her earlier than you did?

Ans. Yes, sir.

Objection. The above testimony is taken subject to the objection that the same is incompetent, irrelevant, and immaterial, and is taken with the same benefit of objection as though made at the time each question was asked.

Cross-ex'n by Mr. PRATT, solicitor for defendant:

Ques. You brought up your wife in June, 1876, and went on to your homestead at that time; did you buy your tickets from Grand Rapids to Petoskey and return?

Ans. I don't know; I can't recollect.

Ques. Who did you leave in charge of your farm and house and other property in Gaines when you came up to your homestead in June?

Ans. My son.

Ques. Did you leave your other children with him?

Ans. Yes, sir; some of them what was at home.

Ques. Was your wife's health as poor while she was up here on the homestead as it had been the year before she came up?

Ans. No; I don't know as it was.

Ques. Did it make her better or worse coming up here and living on the homestead?

Ans. It made her worse.

Ques. How long did she continue worse?

Ans. I don't know as I can state just the exact time.

208 Ques. Did she get so bad that she was obliged to return to Gaines?

Ans. Yes.

Ques. At the time she left the homestead was she better or worse than she had been during the first part of the time after she came up here?

Ans. She was well enough, so she thought she could stand a journey.

Ques. How much of a family had you in June, 1876?

Ans. Well, I had but two that I could really call under my control; the others were all of age.

Ques. I mean how many were living at home, staying with you, before you left Gaines and came up to Little Traverse?

Ans. Well, I don't exactly know; I think there was three then.

Ques. How much lumber did it take to build the house that was first built by Stauffer upon the homestead?

Ans. I don't know.

Ques. Did you know how many shingle were used in building the house, and how much did you pay for them?

Ans. I don't know that neither.

Ques. Didn't you have four girls and one boy at home at the time you had that homestead trial in Sept., '76?

Ans. I don't know whether they were at home or not then; they worked out; they were of age, and they worked out.

209 Ques. Where was you on town meeting day in April, 1876?

Ans. Well, that I can't tell you.

Ques. Didn't you vote at the spring election in the township of Gaines, Kent county, Mich., in 1876?

Objection. The complainant's counsel objects to the question, because it calls for irrelevant, incompetent, and immaterial testimony; also because if he was not a resident of a particular township and yet voted in it, it would only expose him to penalty and punishment, and not operate to change his residence.

Ans. So far as the date is concerned, I don't know; I voted there once since I took up this homestead.

Ques. In your direct examination you say that you didn't swear that you voted last spring in Gaines, Kent county, Michigan, in your direct examination, in reply to a question put by Mr. Dodge, as follows: "Did you at that time and place (meaning at the homestead trial at Traverse City) testify and swear that you voted the spring previous in Gaines, Kent county, Michigan," you answer, "No, sir." Did you at that time and place make any statement as to whether you did or did not vote the spring previous at the town-

ship of Gaines, Kent county, Michigan; and, if so, what did you say?

210 Objection; that the question is not a proper one on *on* cross-examination under the issues herein, and that it mistakes the facts in its recital of facts.

Ans. I did not say anything.

Ques. Were you asked the question at the time of the homestead trial as to where you had voted, or whether you had not voted at Gaines, Kent county, Michigan, the spring before?

Ans. Yes, sir.

Ques. On the homestead trial were you asked what you intended to do with these homestead lands?

Ans. Not as I recollect of.

Cause adjourned till to-morrow, June 30th, 1880, at 8 o'clock a. m.

JUNE 30th, 1880.

Cause called at 8 a. m.

Redirect:

Ques. You say that you were asked at that trial at Traverse City, Michigan, whether you voted in Gaines the spring before. Did you answer that question when it was put to you?

Ans. No, sir.

Ques. Why not?

Ans. Mr. Standish objected.

Ques. Did Mr. Moffatt rule on it; what did he rule?

Ans. That it had nothing to do with the case.

Ques. And so you did not answer the question?

Ans. I did not.

Ques. You say you voted in Gaines once after you entered the land. How came you to do that?

211 Ans. I was there, and I didn't think it would make any difference if I did vote.

Recross, by Mr. PRATT:

Ques. Was it before or after the homestead trial at Traverse City that you voted?

Ans. Before.

(Signed) ENOS JOHNSON.

Taken, subscribed, & sworn to before me, this 30th day of June, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

212 STATE OF MICHIGAN:

The Circuit Court for the County of Emmet.

ENOS JOHNSON, Complainant,
vs.
WILLIAM H. LEE, Defendant, } In Chancery.

I, Ezra C. Barnum, a notary public in and for the county of Em-

met, do hereby certify that the foregoing depositions of P. B Wright, Robert Stauffer, Issaac C. Brower, Henry Bechtel, James Bell, W. R. Bowser, S. Ingalls, Geo. L. Smith, W. C. Ingalls, J. H. Standish, and Enos Johnson, were taken by and before me at the the village Petoskey, in said county, commencing on the 22nd day of June, A. D. 1880, at ten o'clock a. m., and continued from day to day till the 1st day of July, 1880, when said proofs were closed; that the foregoing depositions were taken on the part and in behalf of the said complainant in pursuance of stipulation signed by the solicitors for the respective parties hereto attached; that before making the said depositions the said witnesses were duly sworn by me to testify the truth, the whole truth, and nothing but the truth relating to the cause aforesaid, and that at the taking of the said deposition Messrs. White & Dodge, solicitors for said
213 complainant, and Messrs. Pailthorp & Newberry, and E. S. Pratt, solicitors and of counsel for said defendant, appeared before me, and put such questions to the said witnesses as they thought fit, and that the exhibits hereto attached were produced by the said solicitors for said complainant, and marked as such exhibits by me, and received in evidence, said exhibits being marked respect*fu*lly, Joint Exhibits A," "B," "C," and "A ½."

Dated Petoskey, July 5th, 1880.

Fees, $52.35.

(Signed) EZRA C. BARNUM,
Notary Public in and for Emmet County, Michigan.

[Endorsed:] Emmet circuit court. In chancery. Enos Johnson, compl't, *vs.* William H. Lee, def't. Complainant's proofs.

214 S. W. S.
M. E. N. H.

JOINT EXHIBIT "A,"

By consent of the parties hereto, and received in evidence as referred to in the annexed proofs.

(Signed) EZRA C. BARNUM,
Notary Public.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *February 28th*, 1880.

I, J. M. Armstrong, Acting Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of so much of the testimony in the case of Lee *vs.* Johnson, involving Traverse City homestead entry No. 6681, for the W. ½ N. W. ¼, S. E. ¼ N. W. ¼ & S. W. ¼ N. E. ¼ sec. 7., Tp. 35 N., R. 5 W., Michigan, as relates to the evidence of Enos Johnson.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] (Signed) J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

For the respondent the following proceedings were had:

ENOS JOHNSON, the respondent, being duly sworn, on his oath, says: I am the respondent; I first saw the land in fall, 1874; I bought 500 ft. of lumber & built a shanty on the land; I built it myself; I made my entry April 17, 1875; I sent my son-in-law up about May 1, 1875; he moved up; he was to work for me; I directed what he was to do; he cleared off the land & put up a house; he tore down the old shanty; I came up myself Oct. 5; I stayed until about Christmas; I made my home on the land; I was working on the land & bought some lumber for house & fencing while
215 I was there; there was no fencing done; my family at the time was a wife in Gaines, one boy and some girls, and my son-in-law, above spoken of, as being on the farm; my wife's health, from April, 1875, has been poor; I came up in March, 1876; I stayed two weeks; boarded with my son-in-law; did not do anything on account of snow; I came up again in June, 1876; my wife's health was better, and she came with me, and we have lived there since; the house was built in July, 1875; I paid for all the material put into the house; my son-in-law, Mr. Stoffer, has been in my employ on the place all the time; I have a farm in Gaines, Kent Co., where I entered the land; it was for the purpose of making me a home; Mr. Lee & Pailthorp both advised me to get the additional homestead entries, as I did not get them; I worked on my place; I estimate the improvements on the place at the sum of $200; I was living with my wife on the place June 15, 1876; it was advertised June 21; I have never been off the place for over six months at a time; I have been on the place for a little over 3 month- all together since the entry.

Cross-ex:

There was no particular agreement as to his pay; I was to pay him what his labor was worth; I had moved bed-clothes, my
216 clothes, &c., on the land before it was advertised; Mr. Stoffer went to Little Traverse first before he went on the land; the land was not heavily timbered; I have four girls & one boy at home. Mr. Stoffer- wife was sick when my wife came up. My wife came up to stay. There was no bargain that he should have the land.

Redirect:

I have intended to give him the land when I get my title.

Cross:

I voted last spring in Gaines, Kent Co., Mich. There was no question made as to my voting. I did not think anything about it. I am 63 years of age.

ENOS JOHNSON.

Sub. & sworn to before me, this 19th day of Sept., 1876.
(Signed) S. C. MOFFATT.

EXHIBIT "B."

Introduced in evidence and received by consent.
(Signed) EZRA C. BARNUM,
Notary Public.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 17*th May*, 1877.

SIR: I am in receipt of an application for a rehearing in the case of Lee *vs.* Johnson, involving the question of abandonment by the latter of his homestead claim to the N. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, and S. W. ¼ of N. E. ¼ of section 7, township 35 north, range 5 west, Traverse City, Mich.

217 By my decision of the 2nd ultimo the homestead entry of Johnson was held for cancellation on the ground of abandonment. A petition, numerously signed, asserts that he has valuable improvements on the land, and that he has complied with the law as far as it was practicable and consistent for him to do so, and that the contestant Lee has no equitable interest in the land.

The action taken in the case was based mainly upon the evidence of Mr. Johnson, submitted in his own behalf. It appears from the date of the entry to the date of the trial, a period of about eighteen months, he had been upon the premises but a very small portion of the time. His son-in-law was residing upon the tract. Johnson testified that he intended to give him the land when he obtained his title. He resided with his family in another county, and in the spring of 1876, one year after his entry, voted in said county. These facts are not denied. The illness of claimant's wife might, under certain circumstances, satisfactorily be alleged as an excuse for his failure to enter upon the land within a period of six months after making entry, but the utmost good faith must be shown in

218 order to entitle one to equitable consideration on the part of executive officers.

Basing my opinion upon Mr. Johnson's own testimony, I am unable to arrive at the conclusion that he has complied with the provisions of the homestead law to the extent of entitling him to the benefits of the same. He could not be allowed, at a new hearing, to contradict his own testimony, and even if the allegations in the petition were shown to be facts, it could not change the legal aspects of the case.

Each homestead entry must be determined upon its own merits; the Government is liable in its policy, but it requires a substantial compliance with the provisions of the statute, and, above all, that the applicant should manifest, in the most unmistakable manner, his good faith.

I do not think the interests of justice demand that a new trial be ordered in this case, and the application to that effect must be denied.

Very respectfully,
(Signed) C. SCHURZ, *Secretary.*

The Com'r of the General Land Office.

219 EXHIBIT "C."

Referred to in the annexed proofs.
(Signed) EZRA C. BARNUM,
Notary Public.

To the honorable the Commissioner of the General Land Office of the United States of America, at Washington, D. C.:

We, the undersigned, your petitioners, residents and homestead settlers of Emmet county, in the State of Michigan, would most respectfully represent to your honorable body that one Enos Johnson, from the county of Kent, in the State Michigan, did, on or about the 17th day of April, 1875, enter under the homestead laws of the United States of America the west half of the northwest quarter, southeast quarter of the northwest quarter, and southwest quarter of *of* northeast quarter of section seven (7), in township thirty-five (35) north, of range (5) west, and received therefor homestead certificate number 6681. That in May and June, 1875, he had a house built on said land, and went there to live on the 5th day of October, 1875, and lived on said land for the next three months, building out-buildings and getting house in proper condition for his wife, who was an invalid.

That his wife came to said place in June, 1876, and staid
220 there with him until about the first day of October, 1876; that she had to return to the southern portion of the State during the winter on account of her health.

That on or about the 20th day of June, 1876, and while the said Enos Johnson and his family were residing on said land, complaint was made against him by one William H. Lee, who is a land speculator, residing in the village of Little Traverse, Michigan, that the said Enos Johnson had abandoned his said homestead, and had the same advertised in the Little Traverse papers, notifying him to appear at the United States land office in Traverse City, Michigan, on the 19th day of September, 1876, to respond and furnish testimony concerning said alleged abandonment. That the said Johnson appeared on said day at said land office with his witnesses and gave evidence relative to his occupation of and improvements on said land. That upon the evidence so taken the commissioners of the United States land office decided in favor of said Enos Johnson, and dismissed the complaint of said William H. Lee. That thereupon

the said William H. Lee appealed from the decision of said
221 land commissioner to the Secretary of the Interior of the United States, who reversed the decision of the commissioner of the land office and declared said homestead abandoned, and ordered a homestead certificate to issue to the said William H. Lee, and that in accordance with said order a homestead certificate, numbered 8135, was issued for said above-described land to said William H. Lee. That the said Johnson holds possession of said lands, claiming that in justice and in equity he is entitled to the same.

We, your petitioners, would also respectfully show that the said Enos Johnson has cleared and cultivated about thirteen acres of said

EXHIBIT "B."

Introduced in evidence and received by consent.
(Signed) EZRA C. BARNUM,
Notary Public.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 17*th May*, 1877.

SIR: I am in receipt of an application for a rehearing in the case of Lee *vs.* Johnson, involving the question of abandonment by the latter of his homestead claim to the N. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, and S. W. ¼ of N. E. ¼ of section 7, township 35 north, range 5 west, Traverse City, Mich.

217 By my decision of the 2nd ultimo the homestead entry of Johnson was held for cancellation on the ground of abandonment. A petition, numerously signed, asserts that he has valuable improvements on the land, and that he has complied with the law as far as it was practicable and consistent for him to do so, and that the contestant Lee has no equitable interest in the land.

The action taken in the case was based mainly upon the evidence of Mr. Johnson, submitted in his own behalf. It appears from the date of the entry to the date of the trial, a period of about eighteen months, he had been upon the premises but a very small portion of the time. His son-in-law was residing upon the tract. Johnson testified that he intended to give him the land when he obtained his title. He resided with his family in another county, and in the spring of 1876, one year after his entry, voted in said county. These facts are not denied. The illness of claimant's wife might, under certain circumstances, satisfactorily be alleged as an excuse for his failure to enter upon the land within a period of six months after making entry, but the utmost good faith must be shown in

218 order to entitle one to equitable consideration on the part of executive officers.

Basing my opinion upon Mr. Johnson's own testimony, I am unable to arrive at the conclusion that he has complied with the provisions of the homestead law to the extent of entitling him to the benefits of the same. He could not be allowed, at a new hearing, to contradict his own testimony, and even if the allegations in the petition were shown to be facts, it could not change the legal aspects of the case.

Each homestead entry must be determined upon its own merits; the Government is liable in its policy, but it requires a substantial compliance with the provisions of the statute, and, above all, that the applicant should manifest, in the most unmistakable manner, his good faith.

I do not think the interests of justice demand that a new trial be ordered in this case, and the application to that effect must be denied.

Very respectfully,
(Signed) C. SCHURZ, *Secretary.*

The Com'r of the General Land Office.

219 EXHIBIT "C."

Referred to in the annexed proofs.
(Signed) EZRA C. BARNUM,
Notary Public.

To the honorable the Commissioner of the General Land Office of the United States of America, at Washington, D. C.:

We, the undersigned, your petitioners, residents and homestead settlers of Emmet county, in the State of Michigan, would most respectfully represent to your honorable body that one Enos Johnson, from the county of Kent, in the State Michigan, did, on or about the 17th day of April, 1875, enter under the homestead laws of the United States of America the west half of the northwest quarter, southeast quarter of the northwest quarter, and southwest quarter of *of* northeast quarter of section seven (7), in township thirty-five (35) north, of range (5) west, and received therefor homestead certificate number 6681. That in May and June, 1875, he had a house built on said land, and went there to live on the 5th day of October, 1875, and lived on said land for the next three months, building out-buildings and getting house in proper condition for his wife, who was an invalid.

That his wife came to said place in June, 1876, and staid
220 there with him until about the first day of October, 1876; that she had to return to the southern portion of the State during the winter on account of her health.

That on or about the 20th day of June, 1876, and while the said Enos Johnson and his family were residing on said land, complaint was made against him by one William H. Lee, who is a land speculator, residing in the village of Little Traverse, Michigan, that the said Enos Johnson had abandoned his said homestead, and had the same advertised in the Little Traverse papers, notifying him to appear at the United States land office in Traverse City, Michigan, on the 19th day of September, 1876, to respond and furnish testimony concerning said alleged abandonment. That the said Johnson appeared on said day at said land office with his witnesses and gave evidence relative to his occupation of and improvements on said land. That upon the evidence so taken the commissioners of the United States land office decided in favor of said Enos Johnson, and dismissed the complaint of said William H. Lee. That thereupon

the said William H. Lee appealed from the decision of said
221 land commissioner to the Secretary of the Interior of the United States, who reversed the decision of the commissioner of the land office and declared said homestead abandoned, and ordered a homestead certificate to issue to the said William H. Lee, and that in accordance with said order a homestead certificate, numbered 8135, was issued for said above-described land to said William H. Lee. That the said Johnson holds possession of said lands, claiming that in justice and in equity he is entitled to the same.

We, your petitioners, would also respectfully show that the said Enos Johnson has cleared and cultivated about thirteen acres of said

land, built a good house and stable, and over one hundred and forty (140) rods of good board fence on the same. That the improvements of the said Enos Johnson are worth at least six hundred ($600.00) dollars. That since said house was built in June, 1875, the said Enos Johnson has had a family continuously living on said land, with whom he has lived, except while attending his wife in her sickness.

That we consider it a great hardship and wrong to have
222 these valuable improvements made and created by the hard labor of said Johnson taken away from him without remuneration whatever, and would show that the said Johnson is now residing on and in possession of said homestead, and that on or about the 4th day of September, 1877, while the said Johnson was in quiet and peaceable possession of said land, the said William H. Lee with a possee of men came on the said land and within the clearings of said Enos Johnson, and erected a shanty, where the said Lee and his wife now live, and would most respectfully ask that the said Johnson be reinstated in his homestead, or have a rehearing on the same, to the end that the said Johnson may have, hold, and enjoy, the said homestead as in justice and equity he ought to do, and for which we, your petitioners, will ever pray.

(Signed)

Names.	Names.
Isaac C. Brower.	Michael Lennon.
Henry A. Rollins, *County Clerk.*	William Thompson.
	John Thompson.
James M. Burbeck, *County Treasurer.*	Jesse C. Blough.
	A. Foley.
Jesse Bechtel, *Town Clerk.*	E. P. Foley.
John M. Quick.	John Lavin.
223 Levi D. Post.	Tige Lett.
George Lathrop.	Henry Kensholl.
John Husted.	C. P. Nelson.
Levi H. Dunham.	Eli Penrose.
James Rimmock.	Hiram Buck.
Lewis Johnson.	John H. Mason.
Wm. Wiswell Holland.	Elijah Pope.
John Slabaugh.	Daniel S. Briesley.
Amos W. Palmer.	Ezra Whitney.
Geo. Prouls, *Justice of Peace.*	E. B. Snider.
	John E. Bawden.
W. M. Starr.	Cales Snider.
Wm. H. Thomas, *Justice of Peace.*	Henry Bechtel.
	Jacob Kuburski.
Dougle McDougle.	Thomas T. Convers.
W. A. McDougle.	Wm. H. Converse.
Isaac Wade.	R. H. Russell.
H. Rolinson.	Charles Bachee.
B. Whitaker.	William P. Nelson.
Frank Anderson.	James Rose.
George S. Kennedy.	W. F. D. Long.

Names.	Names.
Lewis Gawer.	N. T. Tarney.
John F. Grosskopf.	Charles H. Zimmerman.
William Thurston, *Supervisor.*	J. E. Howels.
David Thurston.	John J. Cook.
Wm. J. Munn.	Leny Wisor.
George Conden.	W. R. Bowser, *Com. Highway.*
John B. Fletcher.	Hiram Wood.
James Ellis.	Persifer Taylor.
Henry Ogden.	Israel Boynton.
William P. Kizell.	Elijah Jones.
F. J. Gallagher.	William Warner.
224 Dave Lett.	Sauce Wells.
Robert White.	Loran Weaver.
Jones E. Clickner.	Alvin Wilson.
Wm. H. Robinson, *Township Clerk.*	J. G. Buck.
	Frank Wear.
Eli Culler, *Justice of the Peace.*	Conrad Zoll.
	B. F. Dunning.
Samuel Sweet.	George O. Richardson.
Laram Benett.	Delwine McDonal.
Gilbert Maus.	G. W. Swing.
Peter Warren.	Aaron Seals.
Conrad Starr.	

225 [Endorsed:] H. R. 3659. Petition from the settlers and homesteaders of Emmet Co., Mich., in favor of Enos Johnson, Little Traverse.

226 DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *April 23rd*, 1877.

SIR: Referring to your letter of the 17th inst., relative to the homestead claim of Enos Johnson for the N. ½ of N. W. ¼, S. E. of N. W. ¼, and S. W. of N. E. ¼ of section 7, township 35, range 5 west, Traverse City, Michigan, I have to state that from the evidence and admissions of Mr. Johnson himself the fact is so apparent that he has failed to comply with the requirements of the homestead law that his claim must be rejected.

Enclosed please find copy of my decision of the 2nd inst.

Very respectfully, C. SHURZ, *Secretary.*

Mr. J. H. STANDISH,
Grand Rapids, Mich.

227 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Apr. 2nd*, 1877.

SIR: I have considered the appeal of William H. Lee from your decision of November 9, 1876, dismissing the contest brought by him on the charge of abandonment of Enos Johnson of his homestead entry on the N. ½ of N. W. ¼, S. E. of N. W. ¼ and S. W. of N. E. ¼ of section 7, township 35, range 5 west.

In this case you dismiss the contest, as in your opinion the evi-

dence shows that Johnson has complied with the law. The element of good faith is the essential foundation of all valid claims under the homestead law.

Section 2290 of the Revised Statutes requires the applicant to file an affidavit "that such application is made for his exclusive use and benefit, and that his entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use and benefit of any other person. The evidence shows that from date of entry to date of trial, a period of about eighteen months, Johnson was actually upon the land but a very small portion of the time, viz., about three months. He alleges that his wife was in
228 poor health and unable to reside upon the tract in dispute; this might, under some circumstances, be a reasonable excuse for non-residence, if the evidence shows good faith in other respects.

He employed his son-in-law, Robert Stauffer, to reside upon the tract and cultivate the same, furnishing the materials, however, for the improvements. Johneon seems to have been on the tract at various times, and remaining for a few days or weeks, occupying the house with his son-in-law. No period of six months intervened between these visits. He testifies that no sum was agreed upon as the wages to be paid to Stauffer; also, that there was no bargain that he should have the land, but he testifies as follows: "I have intended to give him the land when I get my title." He resides with his family in another county, and in the spring of 1876, one year subsequent to the date of his entry, he voted in said county.

These facts and admissions are, I think, sufficient to justify the conclusion that Johnson connot be considered a *bona fide* homestead claimant, acting in good faith, but rather that he is seeking by a seeming compliance with the forms of law to obtain a tract of land for his son-in-law who has exhausted his homestead privilege.
229 Your decision must therefore be reversed and the homestead entry cancel-ed.

The papers transmitted with your letter of the 30th ultimo are herewith returned.

Very respectfully, C. SHURZ, *Secretary.*

Hon. Commissioner of the General Land Office.

[Endorsed:] Exhibit "A½," referred to in the annexed proofs. (Signed) Ezra C. Barum, notary public, Emmet county, Mich.

230 In the Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

In this cause it is stipulated by and between the attorneys for respective parties, the above-entitled cause, that the testimony in said cause shall be taken at the office of Pailthorp & Newberry, in the village of Petoskey, on the 22d day of Jnne, A. D. 1880, at ten o'clock in the forenoon, and from day to day and time to time thereafter until all the testimony may be taken in said cause; and it is further stipulated that said testimony shall be taken before E. C.

Barnum, or such other person as the attorneys may agree upon at the time. And it is further agreed that within five days after the testimony shall have been closed said party before whom said testimony shall be taken shall report said testimony to the circuit judge at Traverse City, Mich.; and that within fifteen days after said testimony shall be reported to said circuit judge, said parties or their solicitors shall proceed with an oral or written argument be-

231 fore said circuit judge, at his chambers, at Traverse City, Mich., and that said circuit judge shall proceed to a final consideration, and render a decree in said cause, the same as submitted in open court; and it is further stipulated and agreed that if the said complainant shall fail or neglect to take his proof at the time agreed upon, unless the time of taking said proof shall be changed by the written stipulation of the attorneys hereto, then at the time agreed upon the said bill of complaint may be dismissed by the order and decree of the court to be rendered and filed in said cause. It is also further stipulated and agreed by and between the attorneys of said parties that said complainant shall pay to said defendant the sum of nine 60-100 dollars, being the amount of defendant's cost for preparing for trial at this term; and that said costs be paid on or before the day fixed for taking the proofs in this cause.

Dated May 12th, 1880.

(Signed) WHITE & DODGE,
Sol's for Complainant.
" PAILTHORP & NEWBURY,
Sol's, &
E. S. PRATT,
Of Counsel for Defendant.

232 EDWARD STEVENSON, a witness produced by the complainant, pursuant to the stipulation between counsel, filed in this cause, being duly sworn in open court, on his oath says:

My name is Edward Stevenson.

Ques. Are you the register of the United States land office at Reed City, Michigan?

Ans. Yes, sir.

Ques. Have you in your possession, received by course of mail from the Secretary of the Interior, at Washington, any papers containing proofs of abandonment of homestead entry No. 6681, wherein Enos Johnson and William H. Lee were contestants?

Ans. I have received such a paper through the Commissioner of the General Land Office.

Ques. Are these the papers that you now have?

Ans. Yes, sir.

[Ques.] Give the names of the persons whose testimony is contained in these papers?

Ans. Job Scott, Isaac Stauffer, A. S. Lee.

Ques. Are these on the part of the complainant, Wm. H. Lee?

Ans. They are.

233 Ques. Give the names of the witnesses on the part of the defendant, Enos Johnson?

Ans. Enos Johnson, the respondent, Robert Stauffer, Henry Bechtel' James Bell.

Counsel for complainant here offers the aforesaid papers in evidence.

They are received in evidence and are hereto attached, marked "Exhibit D."

REUBEN HATCH,
Circuit Judge.

Refer in your reply to this initial "C." End.

1880—42041. L. W. S. W. O. C.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington. D. C., June 23, 1880.

EDWARD STEVENSON, Esq.,
Register U. S. Land Office, Reed City, Mich:

SIR: I am directed by the Hon. Secretary of the Interior to transmit to you the papers in the case of Wm. H. Lee *vs.* Enos Johnson, involving the W. ½ of NW. ¼, SE. ¼ of NW. ¼, & SW. ¼ of NE. ¼ of sec. 7, t'p 35 N., R. 5 W, to be used in a case in court in which Geo. H. White, Esq., of Grand Rapids, Mich., is an attorney. You
234 will be considered the custodian of the papers, and will probably be summoned to appear with them before the court, after the trial or as soon as the court may direct. You will return the papers to this office in a special letter.

Very respectfully,
(Signed) J. A. WILLIAMSON, *Commissioner.*

LAND OFFICE AT TRAVERSE CITY, MICH.,
Sept. 19, 1876.

In the matter of the homestead entry of Enos Johnson, No. 6681, made on the 17th day of April, 1875, and being the W. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, & S. W. ¼ of N. E. ¼ of sec. 7, T. 35 N., R. 5 W.

Complaint having been made at this office that Enos Johnson, who made the above entry, had abandoned the same for more than six months, the 19 day of Sept., 1876, was appointed for a hearing — the complaint and taking testimony thereon, at the office of the register at Traverse City at 1 o'clock p. m.

We are satisfied that time and notice of the time and place of trial has been brought home by the contesting party to the said Enos Johnson by publishing a notice of the same once in each
235 week for six successive weeks in a newspaper published and having general circulation in the vicinity of the land, and that personal service of notice on said Enos Johnson was impracticable for the reason that his residence was unknown.

Affidavits of these facts have been filed in this office by the complainant in this case agre-ably to commissioner's instructions of September 29, 1865.

At the time and place above specified the parties appeared, when the following proceedings were had:

JOB SCOTT, a witness produced and sworn on the part of the complainant: I live in Little Traverse; have so lived since Sept. 18, 1875; I know the respondent; he had a homestead entry on sec. 7, T. 35 N., R. 5 west, W. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, & S. W. ¼ of N. E. ¼, all same sec.; I live within one-half mile of the land; I do not know of Mr. Johnson's family being on the land; I have seen Mr. J. there himself; I should not think Mr. J. had been on the land more than three months from the time he entered it until the complaint in this case was made; Mr. Robert Stauffer is living on the place.

Cross-ex.:

There is no worked road passed the homestead; I cannot tell
236 how many times I was passed the place. Mr. J. entered the *entered the* homestead ——— 19, 1875. At the time of the entry there was a board shanty on the land. I had been on the place before he made the entry. Mr. J. told me he built the shanty. I have know- Mr. Stoffer living on the land; he is son-in-law to Johnson. I don't remember seeing Mr. J. on the place until Oct., 1875. I saw Mr. Stoffer at work on the place; I don't know who he was at work for. He has worked the place ever since. I think there is ten acres improvement—fence, log & brush, on south side; board fence on west side and partly on north side; the rest brush fence. The shanty above spoken of was torn down and a frame house built in its stead. The dimensions are, as near as I can judge, *is* 18x26 feet. There is a log stable on the place; there is a spring at the foot of the hill. I think I saw Mr. J. on the land in Oct.; he stayed a month or six weeks; he was helping to get logs for the barn on his homestead. I did not see Mr. J. until this spring again. I don't know whether Mr. J. was there from Oct. 5th to Dec., 1875, or not.

Redirect:

The land cleared was an old Indian clearing, grown up to brush. The most of the board fence has been built since the complaint in this case; all on the north side.

(Signed) JOB SCOTT.

Sub. & sworn to before me, this 19th day of ———, 1876.
S. C. MOFFATT.

237 Mr. ISAAC STOFFER, a witness for the complainant, being duly sworn, on his oath says:

I live in Petoskey; have since May, 1876. I lived in Gaines previous to coming to Petoskey. I know the defendant; he owns a farm in Gaines, Kent Co. I know Mr. J. lived there until I left, the last of April, 1876. I have no knowledge of his moving his effects, &c., out of the town of Gaines. I have known Mr. J. for twenty years.

Mr. J. has been absent himself sometimes. I was out of town in April, May, June, 1875.

Cross-ex.:

I lived two miles from Mr. J. in Gaines. I went to Petoskey *in* April 15, 1875, and stayed until July 15. I don't know where Mr. J. was during that time. When I returned I saw Mr. J. in Gaines. I knew Mr. J. was absent in Oct.; I don't know how long he was away. I think he was in the Little Traverse region from Oct. 5 to Dec. 24, 1875.

(Signed) ISAAC STAUFFER.

Sub. & sworn to before me, this 19 day of Sept., 1876.

(Signed) S. C. MOFFATT, *Reg.*

A. S. LEE, a witness produced and sworn for the complain-t, on his oath says:

Ques. Did Mr. Johnson try to purchase any addition-soldier entry to apply on his homestead?

238 (Question objected to, as irrelevant and immaterial. Answer taken subject to objection.)

Ans. Some time last fall Mr. J. came to me and said he had a homestead, and it cost him considerable to come up and look after it, and he wanted to get two additional 80 acres claims, so that he could get a deed for his homestead. In last March he called on us again in regard to the matter, but they could not be handled, on ac't of the year for entries having expired.

Cross-ex.:

The complainant is my brother; we never had any conversation about it.

(Signed) A. S. LEE.

Subs. and sworn to before me, Sept. 19, '76.

(Signed) S. C. MOFFATT, *Reg.*

For the respondent, the following proceedings were had:

ENOS JOHNSON, the respondent, being duly sworn, on his oath says: I am the respondent; I first saw the land in fall of 1874; I bought 500 f't of lumber and built a shanty on the land; I built it myself; I made my entry April 17, 1875; I sent my son-in-law up about May 1, 1875; he moved up; he was to work for me; I directed what he was to do; he cleared of- the land and put up
239 a house; he tore down the old shanty; I came up myself Oct. 5; I stayed until about Christmas; I made my home on the land; I was working on the land, and I bought some lumber for house and fencing; while I was there there was no fencing done; my family at the time was a wife in Gaines, one boy, and some girls, and my son-in-law, above spoken of as being on the farm; my wife's health from April, 1875, has been poor; I came up in March,

1876; I stayed two weeks; boarded with my son-in-law; did not do anything on account of snow; I came up again in June, 1876; my wife's health was better, and she came with me, and we have lived there since; the house was built in July, 1875; I paid for all of the material put into the house; my son-in-law, Mr. Stoffer, has been in my employ on the place all the time; I have a farm in Gaines, Kent Co.; when I entered the land it was for the purpose of making me a home; Mr. Lee and Pailthorp both advised me to get the additional homestead entries; as I did not get them I worked on my place; I estimate the improvements on the place at the sum of $200; I was living with my wife on the place June 15, 1876; it was advertised June 21; I have never been off the place over six
240 months at a time; I have been on the place for a little over 3 months, altogether, since the entry.

Cross-ex.:

There was no particular agreement as to his pay; I was to pay him what his labor was worth; I had moved bed clothes, my clothes, &c., on the land before it was advertised; Mr. Stoffer went to Little Traverse first before he went on the land; the land was not heavy timbered; I have four girls and one boy at home; Mr. Stoffer's wife was sick when my wife came up; my wife came up to stay; there was no bargain that he should have the land.

Redirect:

I have intended to give him the land when I get the land.

Cross:

I voted last spring in Gaines, Kent Co., Mich.; there was no question made as to my voting; I did not think anything about it; I am 63 years of age.

(Signed) ENOS JOHNSON.

Sub. & sworn to before me, this 19 day of Sept., 1876.

S. C. MOFFATT, *Reg.*

ROBERT STOFFER, a witness for the respondent, being duly sworn, on his oath says: I am the son-in-law of the respondent; I have been in his employ and worked for him on the homestead
241 since May, 1875, and so worked for him when on the homestead until June 21, '76; I cleared off and fenced ten or eleven acres; there was about six last year, and the rest before June 21, 1876; the fencing was about all done before June 21, 1876; all the fence was built by Mr. Johnson or myself; Mr. J. came Oct. 5, and stayed to the last of Dec.; he came again in March; stayed about two weeks; Mrs. J. was in Gaines; Mr. J. fetched Mrs. J. there June 15; she remains there yet; Mr. J. fetched ax, brush hook, bed clothes, & his own clothes; when there he helped make improvements; I know from letters that Mrs. J. was not well; the improvements was worth I don't know how much; Mr. J. was to pay me what my labor was worth; we raised some crops that year.

when the complaint was —; 2 acres of clover, 4 acres of wheat, 3 acres of oats, corn, & peas; I put in the crops for Mr. J.; he sent the seed to me.

Cross-ex.:

I entered a homestead April 17, 1875; it is 5 or 6 miles from the homestead of Mr. J.; I never done anything with it; I think Mr. J. has been on the place three months and a half from the — of entry until the complaint; there has not been any of his
242 family except his wife and my family on the place; Mr. J. has not had any store on the place; I had no conversation with Mr. Scott to the effect that I was to have the place after Mr. J. five years were up.

Redirect:

We lived as one family on the place; these goods are mine.
(Signed) ROBERT STAUFFER.

Sub. & sworn to before me, this 19th day of Sept., 1876.
(Signed) S. C. MOFFAT, *Reg.*

HENRY BECHTEL, a witness for the respondent, being duly sworn, says:

I live in township of Little Traverse; know the land; live five or six miles from said lands, and have since Nov. last; before that in Little Traverse, a little over a mile. I knew Mr. J. homesteading the land; Mr. J. ordered his son-in-law to build a house in July, 1875. I helped him clear off and put in crop, about seven acres; I received part of the crop. I made my bargain with Mr. J. Mr. J. was there from Oct. to last of Dec., working on the place. I saw Mr. J. in March. Mr. J. moved his wife there in June, 1876, before the complaint. The improvements were worth *worth* nearly $300. I think Mr. J. has been on the land 4 months.
(Signed) HENRY BECHTEL.

Sub. & sworn to before me, Sept. 19, '76.
(Signed) S. C. MOFFAT, *Reg.*

243 EXHIBIT D.

Referred to in the annexed proof.

REUBEN HATCH,
Circuit Judge,

JAMES BELL, a witness for the respondent, being duly sworn, says:

Mr. J. came to me in Nov., 1875, and wanted me to get him an additional entry. He was in off and on until Dec. 20. He went home Dec. 24, 1875. I knew Mr. J. was working on the homestead. I knew he was there in the spring. I should judge there was 8 or ten acres cleared, worth $300 or $400.

Cross-ex.:

I understand his home to be in Kent Co. I think there was about

30 ft. square cleared before he entered it. I think some fence —— built since June 21 last. I can't tell how this is; which it was, before or since June 21.

(Signed) JAS. BELL.

Sub. & sworn to before me, Sept. 19, 1876.

(Signed) S. C. MOFFAT, *Reg.*

ISAAC STOFFER, recalled by compl't:

I did not hear of Mrs. Johnson being sick. I passed there often, but never went to Mr. J. house. I knew nothing about her health that summer.

(Not signed.)

Sub. & sworn to before me, this 19th day of Sept., 1876.

(Signed) S. C. MOFFAT, *Reg.*

LAND OFFICE AT TRAVERSE CITY, MICH., *Sept.* 19, 1876.

We hereby certify that the foregoing testimony was reduced to writing and signed in our presence, and that the witnesses are persons of respectability and entitled to credit.

S. C. MOFFATT, *Register.*
PERRY HANNAH, *Receiver.*

[Endorsed:] Land office at Traverse City, Mich., Sept. 19, 1876. Seth C. Moffatt, register. Perry Hannah, receiver. Proof of abandonment of homestead entry No. 6687.

244 STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Complainant,
vs.
WILLIAM H. LEE, Defendant.

Testimony of witnesses taken in the above-entitled cause, under and by virtue of an order of reference of the said circuit court and a stipulation signed by the solicitors of the respective parties, before me, the undersigned, a notary public in and for said county, at the village of Petoskey, in said county, beginning on the 22nd day of June, A. D. 1880, at ten o'clock a. m. of that day, Messrs. White & Dodge appearing as solicitors for the complainant, and Messrs. Pailthorp & Newberry and E. S. Pratt, solicitors and of counsel for the defendant, on the part and in behalf of the defendant.

A witness produced, sworn, and examined on the part of the defendant testified as follows:

Ques. State your age and place of residence.

Ans. I am 38 years old, & reside at Traverse City.

Ques. State whether or not in the year 1876 you held any official position under the appointment of the U. S. Government;

245 if so, state what?

Ans. I was register of the land office for the Grand Traverse district.

Ques. State where the land office was located.

Ans. At Traverse City, in Mich.

Ques. State whether you remember the fact of one Wm. H. Lee making complaint against Enos Johnson of the abandonment of his homestead entry of lands lying near Little Traverse, Emmet Co., Mich.

Ans. I recollect such complaint having been made, but don't recollect when.

Ques. State whether you remember the fact of the trial, &, if so, whether you was present and took the testimony of the witnesses who were sworn on that trial.

Ans. I remember it, and took the testimony.

Ques. State whether the defendant in the homestead trial, Enos Johnson, was sworn and gave evidence on the trial.

Ans. Yes.

Ques. State your manner of taking testimony.

Ans. The party was sworn and examined-in-chief by his counsel, Col. Standish; I don't recollect whether there was any cross-examination or not; I asked some questions myself. I think
246 that was generally the custom. The answers I reduced to writing. It was reduced in narrative form. I don't think I took the questions.

Ques. After taking down the testimony, state whether it was read over to the witness Johnson, and then subscribed by him.

Ans. I can only answer that by saying that I presume it was; that it was my usual custom; I always done it, or intended to, and presume I did in this case, but have no distinct recollection in this one.

Ques. After taking the testimony of the witnesses upon the homestead trial what was done with it?

Ans. I think that it was Mr. Lee's brother, Abner S. Lee, after the testimony was taken, requested permission to copy the testimony, & I gave it to him for that purpose, & after that it remained in my office till the first of the succeding month, when it was forwarded to the Department at Washington.

Ques. At the time Mr. Abner S. Lee copied this testimony did he remove it or take it out of your office?

Ans. No, sir.

Ques. State whether the testimony was ever changed by you, or by any person, to your knowledge, after it was subscribed by Mr. Johnson and before it was sent to Washington or afterwards.

Ans. No, sir.

247 Ques. In taking down the testimony state whether or not you were compelled to take only what the witness said.

Ans. Certainly.

Cross-ex by compl't's solicitor:

Ques. How many witnesses were sworn on that contest?

Ans. I don't know.

Ques. How many pages of testimony was taken on that contest?

Ans. I don't remember.

Ques. How long was Mr. Lee engaged in copying it?

Ans. My impression is, it was about two hours; I know I had to hurry him up, for I wanted to get out of the office at five o'clock, when I generally left the office; my impression is it was about three or four when he commenced, and he was about two hours.

Ques. Did you watch him while he was copying?

Ans. No; will say here that I think both of the Lees were engaged in copying it; that they divided it and copied it.

Ques. When you included both of the Lees, you mean the defendant and his brother.

Ans. Yes, sir.

Ques. Did you compare their work with the original when they were through?

Ans. No, sir; never saw it, and don't know anything about it.

Ques. Did either of the Lees have access to your office
248 & that testimony at any time after it was taken & before it was forwarded to Washington?

Ans. They might have had; the office, of course, was open.

Ques. Have you seen those original papers since they were sent to Washington?

Ans. No.

Ques. Did you examine them before you sent them away to see whether they had been changed or not?

Ans. No, sir; that is, I have no recollection of it in any way.

Ques. So you do not know whether they were changed or not, as a matter of fact?

Ans. No, sir.

Ques. In taking that testimony, did you take down the answers of the witnesses verbatim, or so much as you deemed material to the issue in the case?

Ans. I took the latter; that is, so much as I deemed material; I did not take it verbatim.

Ques. Were any questions or objections raised or discussed in the contest that you now remember of?

Ans. I have no recollections of any.

Ques. Do you know, of your own knowledge, whether the brother of the defendant had any personal or pecuniary interest in that contest?

Ans. I don't know.

Redirect ques. State whether in taking down the testimony of witness you neglected to take anything you deemed material,
249 or refused to take anything that the party or his attorney requested you to take.

Ans. I took all that I deemed material, and always took everything I was requested to take by the parties or att'ys, whether I deemed it material or not.

(Signed) SETH C. MOFFATT.

Taken, subscribed, and sworn to before me, this 22nd day of June, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

A witness produced, sworn, & examined on the part and behalf of the defendant, testified as follows:

Ques. What is your name, age, residence, & occupation?

Ans. My name is Abner S. Lee; age, 44; occupation, real estate and insurance agent; residence, Petoskey, Michigan.

Ques. Are you acquainted with the defendant, Wm. H. Lee?

A. I am.

Ques. Is he your brother, so reputed?

Ans. He is.

Ques. Are you acquainted with the so-called Johnson homestead lands?

Ans. Yes; I have been on the land.

Ques. State when you were first on the lands, as near as you can remember.

Ans. A short time previous to the homestead trial, the trial of this land in question at Traverse City.

250 Ques. Was it before or after your brother advertised the land that you were on the land.

Ans. It was after it was advertised.

Ques. State whether you had any knowledge that your brother intended to advertise those lands until he had advertised them?

Ans. If my memory serves me right, I got my first information from him after he advertised them.

Ques. Previous to the time that your brother advertised this homestead, was he a real estate speculator or had he been engaged in real estate speculations, to your knowledge?

Ans. Never to my knowledge.

Ques. Previous to your brother's advertising this homestead had you ever counselled or advised with him in reference to advertising it?

Ans. I never advised him to advertise it.

Ques. Do you remember where your brother resided at the time he advertised it?

Ans. In the village of Little Traverse, Mich.

Ques. Was his family living in Little Traverse or at Petoskey at this time?

Ans. In Little Traverse.

Ques. Previous to your brother advertising this homestead had you any knowledge of the fact that Mr. Johnson had a homestead in the vicinity of Little Traverse?

Ans. I had heard that he had.

Ques. Was that information derived from Mr. Johnson?

Ans. Mr. Johnson and others.

251 Ques. State what conversation you had had with Mr. Johnson in relation to this homestead previous to the time your brother advertised it?

Ans. The first conversation was, I think, in the fall of 1875; the conversation occurredin the office formerly occupied by Mr. C. J. Pailthorp and myself, upper room E. J. Gifford's building, Lake street, Petoskey. Mr. Johnson came into the office and wanted to know if we had additional homestead claims for sale. I think his remarks were that he had a homestead claim across the bay, and it was rather expensive for him to come from his home in the town of Gaines, Kent county, to look after his homestead. I think my answer at that time was I had none, but would try and get some. Two additional eighths I think he inquired after. He went out and said he would see me again on his return, as he was on his way south to his home; that was all the conversation at that time.

Ques. Had you any other conversation with him in reference to it?

Ans. The next conversation occurred in the following spring, in the office I now occupy, and as near as I can recollect that, according to the non-ruling of the Department at Washington concerning the homestead entry claims, I could not furnish them for him. That was all the conversation at that time concerning this case that
252 I recollect of. This was in reply to a question that he asked me, in effect, if I had got those additional eighties?

Ques. Were you present at the land office in Traverse City on the 19th day of September, 1876, at the trial in relation to his, Johnson's, homestead?

Ans. I was.

Ques. State whether the complainant, Enos Johnson, was sworn in his own behalf on that trial.

Ans. He was.

Ques. Was you present, and did you hear his testimony?

Ans. I was, & did.

Ques. Did Mr. Johnson at that time upon that trial, upon giving his testimony before the register, in testifying whether he intended these homestead lands for his son-in-law, Robert Stauffer, testify in substance as follows: "There was no bargain that he should have the land;" then, "I have intended to give him the land when I got my title?"

Ans. Well, my recollections are, as near as I can recollect, that Mr. Johnson did so testify.

Ques. Did Mr. Johnson at the same time and place, in giving his testimony on said trial, testify in substance as follows: "I voted last spring in Gaines, Kent county, Michigan; there was no question made as to my voting; I did not know anything about it?"

Ans. He did.

253 Ques. Do you know who asked the question that drew out that evidence or statement?

Ans. I think it was myself.

Ques. State whether, after Mr. Johnson gave his testimony, it was read over to him by the register and then subscribed by him.

Ans. It was.

Ques. Was the testimony read over in a careful manner by the register before Johnson signed it?

Ans. Yes.

Ques. After the evidence had been all taken, state whether or not you saw it and read it over, and took note of what the complainant Johnson had testified to.

Ans. I did.

Ques. When was it that you saw and read this testimony?

Ans. I think it was immediately after the trial before S. C. Moffatt, register.

Witness is here shown a paper, and states it is in the handwriting of A. S. Lee.

Asked by defendant's counsel to state what it it is, and says that it is a copy of the evidence given by Enos Johnson at the homestead trial before S. C. Moffatt, register of the land office at Traverse City, at the homestead trial on the 19th of September, I think, '76.

Ques. Where did you get this copy of Mr. Johnson's testimony?

Ans. Of the original evidence in the case, taken down by S. C. Moffatt, register, at his office, at Traverse City, and in his presence.

254 Ques. State whether there had been to your knowledge any changes, interlineations, or additions made to Mr. Johnson's testimony after it was subscribed by him.

Ans. Not any.

Ques. State whether on the face of the original affidavit there was any changes or interlineations or additions to that portion or part of his testimony where it reads as follows: "I have four girls and one boy at home. Mr. Stauffer's wife was sick when my wife came up to stay. There was no bargain that he should have the land. Redirect.: I have intended to give him the land when I get my title. Cross-ex.: "I voted last spring in Gaines, Kent, Co., Mich. There was no question made as to my voting. I did not know anything about it. I am sixty-three years of age."

Ans. There was not.

Ques. Did you at that time or since in any manner alter, change, or add to Mr. Johnson's testimony?

Ans. I have not.

Defendant's solicitor here offers in evidence the paper identified by the witness as made by him of the original testimony of Mr. Johnson, as given on the homestead trial, and is received in evidence and marked Exhibit "D."

Cross-examination by complainant's solicitor:

Ques. Did you assist your brother at the trial, at Travese City, before Register Moffatt?

Ans. I did.

255 Ques. Who was present there at that trial?

Ans. S. C. Moffatt, Enos Johnson, Wm. H. Lee, Job Scott, Isaac Stauffer, a man by the name of Bechtel, Robert Stauffer, and James Bell. I have no positive recollection of the names of any others. Standish, of Grand Rapids, and I was there.

Ques. Who were the witness in the behalf of your brother?

Ans. Job Scott, Isaac Stauffer, and myself.
Ques. Did you testify?
Ans. I did.
Q. State what your testimony was.
Ans. I will give it as near as I recollect. Some time in the fall 1875 Mr. Enos Johnson called upon me to procure or get some additional eighties for him. He told me that he had a homestead claim. I think that I told him that I would let him have some additional claims if I could them. He told me that it was expensive going back and forth from his homestead to his home in Kent Co.
Ques. Did you testify at that time and place anything concerning the abandoment of their homestead by Mr. Johnson?
Ans. I think not.
Ques. Who did you first tell before that trial of what you would swear to?
Ans. No living person that I have any recollection of, sir.
Ques. Did your brother engage you to go there and help him?
Ans. He did not.
256 Ques. What did you go for then?
Ans. I went voluntary.
Ques. Had he spoken to you about going?
Ans. I don't think he ever asked me to go.
Ques. Did he know that you was going?
Ans. I think that we went down together, if I recollect right.
Ques. Who paid your expenses down and back and while there?
Ans. Wm. H. Lee.
Ques. Did he know that you were going there?
Ans. He did.
Ques. Did he know what you were going there for.
Ans. He did know that, to attend the trial of Lee *vs* Johnson, the same trial referred to.
Ques. When did you tell him you were going?
Ans. I am not positive as to day and date as to that.
Ques. Was it before you went?
Ans. I think so.
Ques. How long before?
Ans. I haven't any recollection as to the precise time.
Ques. If you didn't know anything about the matter until after your brother had advertised the land, and at that time had never saw the land, didn't you know anything about its improvements or its value, and your brother had not engaged or spoken to you to go down for him, and you hadn't told him what you would swear
257 to, what led you to go there and voluntarily help him, and voluntarily swear for him. Please explain that, and you hadn't seen the land until after it was advertised.
Ans. I went down to hear the evidence that might be given on the trial.
Ques. Is that your only reason?
Ans. Yes.
Ques. How did you know there was going to be a trial?
Ans. I understood there was from my brother and others.

Ques. Then you had talked with your brother about it?

Ans. We had some conversation about it after this claim was advertised.

Ques. Did you talk with his witnesses to see what they would swear to?

Ans. I don't know that I did.

Ques. Do you know you did not?

Ans. If I did, I have no recollection of it.

Ques. Then you won't swear you didn't.

Ans. I repeat my former answer.

Ques. Do you think you went down there voluntarily to assist your brother in that case, and a case so important as that, without knowing anything about what his case was, do you want to swear to that?

Ans. After our arrival at Traverse City my brother asked me if he ought not to have an attorney; I told him if he thought
258 best I would see Mr. Pratt; I called upon Mr. Pratt, and he told me he didn't think it worth while for an attorney in the case, to be employed in the case.

Ques. Why don't you answer my question?

Ans. Having no authority, I told him I would assist him all I could at the trial.

Ques. When did you tell him that, after you saw Mr. Pratt or before?

Ans. After my interview with Mr. Pratt.

Ques. Now, witness, why don't you answer my question; I want you to give a reason why you don't answer my question, if you can.

Ans. I consider the question answered.

Ques. Did you know that your brother intended to enter the land if Johnson's claim was canceled.

Ans. I know that was his intention.

Ques. Who told you so?

Ans. He left the money and the proof with Mr. Moffatt on the day of the trial.

Ques. Who told you he intended to enter the land if Johnson's claim was cancelled?

Ans. I was not told by any person.

Ques. How did you find it out then?

Ans. I think myself and one other person were witnesses that day after the trial was over, npon an application of Wm. H. Lee, qualifying that the land was not valuable for pine timber, an application for entry by Mr. Lee.

Ques. Was that the first you know of his intentions to enter the land?

259 Ans. I never heard him say that he intended to enter the land.

Ques. Why don't you answer my last question?

Ans. I think I have.

Ques. Did you understand the question?

Ans. I think so.

Ques. And you swear you think you answered it, do you?

Ans. I said above I thought so, and I still think so.

Ques. Can you give any other answer to that question than the one you have given, and without evasion tell the truth?

Ans. I don't propose to give any further answer to that question than the one I have given.

Ques. What did you swear to at the time he made his application for the land, about the land being not chiefly valuable on account of the pine timber being thereon?

Ans. As near as I can recollect, that I had been upon each legal subdivision thereof, and that it was more valuable for farming purposes than pine timber.

Ques. Was that true?

Ans. Yes, sir.

Ques. When did you go upon each legal subdivision of that land to ascertain what kind of timber was growing upon it?

Ans. I think it was some time in the early part of September, 1876.

Ques. How came you to go?

Ans. I called to see my brother, and he and I took a stroll over the place.

260 Ques. Before the trial or afterwards?

Ans. A short time prevtous to the trial.

Ques. How long should you think?

Ans. A short time; I don't recollect the number of days.

Ques. A month?

Ans. No, sir; I don't think it was a month; it was a very few days.

Ques. Had you ever been there before?

Ans. I think this was my first visit on the land.

Ques. He wasn't living on the land then, was he?

Ans. No, sir.

Ques. Then he took you to it?

Ans. We went together.

Ques. Did he tell you where you was going before you started?

Ans. I don't know as he particul-y stated.

Ques. Did he tell you what he wanted you to go there for?

Ans. I don't know that he did.

Ques. Will you swear he didn't?

Ans. Yes, if you want me to; I will.

Ques. Well, did he or did he not?

Ans. He did not.

Ques. Did you look over the land carefully to ascertain whether it was chiefly valuable for pine timber or not?

Ans. I did.

Ques. Did you have any interest in that land, Mr. Lee?

Ans. Not a dollar's worth.

Ques. Was there any understanding or agreement of any kind or nature between you and your brother, the defendant, that if

261 he got the land you should have any interest in it, or any portion of it?

Ans. There was no understanding that I should ever have any title in fee simple to any of it.

Ques. Why don't you answer my last question?

Ans. I have done so.

Ques. Do you swear that you have done so to the best of your ability?

Ans. There was no understanding that I was to have any of the land.

Ques. That is not an answer to my question.

Ans. I don't propose to answer it any further.

Ques. Was there any hint or intimation on his part conveying to you any idea that if he got the land you should have an interest in it, or some portion of it?

Ans. No, sir.

Ques. Was there any understanding or agreement or any hint or intimation that you, in any way, should be benefitted if he got the land?

Ans. No, sir.

Ques. How long was you looking it over?

Ans. About three or four hours—about that.

Ques. Did he tell you what he was going to do with it, if he got it?

Ans. No, sir.

Ques. Are you sure about it?

Ans. I said yes, sir.

Ques. Didn't he tell you he was going to move on to it and make a farm of it?

Ans. He did not.

262 Ques. Didn't yon talk anything about that in going over there and looking over the land?

Ans. There was nothing said at that time what he would or would not do with it.

Ques. Please answer my last question.

Ans. I consider that I have answered it in my last answer.

Ques. Well, did you know whether you did talk about it or you didn't?

Ans. I know there was nothing said, what he would do with it or what he would not do with it, in the conversation at that time.

Ques. You know what you went on that land for. What did you talk about on the way and while there?

Ans. I have no recollection of our conversations—what subject we did talk on. I am positive nothing concerning what he would or would not do with the land.

Ques. Don't you recollect something what was talked about?

Ans. I have answered the question fully.

Ques. Can't you answer it in any other way truthfully?

Ans. I don't propose to give any further answer to it.

Ques. Now, witness, if you can't recollect anything about what you and your brother talked about on your way over to that land & while you were examining it several hours, how can you swear

so positively that you didn't talk about what you or he was a going to do with it if he got it. Just please explain that.

263 Ans. For the simple reason that nothing was said regarding what he was going to do with it, whether he got it or didn't get it.

Ques. Is that all the explanation you wish to make?

Ans. I have nothing further to say concerning the question.

Ques. You went to see Mr. Pratt, you say, when you got to Traverse City, on the day of the trial there, and he told you he didn't think it was worth while for your brother to have an attorney; is that true?

Ans. That is the language, I think, Mr. Pratt used.

Ques. Was your brother with you when you went to see Mr. Pratt?

Ans. I think he was not.

Ques. While you and your brother was over there on the land together, did you talk about Mr. Enos Johnson, and how you were going to show he had abandoned the entry?

Ans. I don't have any recollection of any such conversation at that time.

Ques. You may have talked about that and you may have forgotten it, may you not?

Ans. I don't have any recollection of talking of the Johnson case at that time.

Ques. Why don't you answer my last question?

Ans. There was no conversation that day concerning that.

Ques. Are you sure of that, quite positive?

Ans. To the best of my knowledge and belief, I am.

Ques. Well, if you had talked about it you think you would have remembered it, don't you?

Ans. I considered the question answered in my last answer.

264 Ques. You won't answer that question in any other way than you have, will you?

Ans. I have no further answer to make to the question.

Ques. Was Johnson's name mentioned that day by you or your brother?

Ans. I don't recollect as it was.

Ques. Was Mr. Robert Stauffer's?

Ans. Yes, sir; I think it was.

Ques. What did you say about him?

Ans. I think my brother said that that was the house, shanty, or something, where Mr. Stauffer lived, or where [he] had lived.

Ques. Did you know which Stauffer he meant?

Ans. I think he said Robert Stauffer.

Ques. Well, what else did he say in relation to Robert Stauffer?

Ans. I think there was nothing else said in regard to him.

Ques. Did you look at the improvements you found there?

Ans. Not particularly.

Ques. You saw them?

Ans. I think there was a small clearing.

Ques. Did you see them?

Ans. I saw the improvements.

Ques. Did you form any estimate as to the value of the improvements?

Ans. No, sir; I did not.

Ques. Did you and your brother talk about them?

Ans. No; I don't think anything was said regarding the improvements; I don't recollect that there was.

265 Ques. Did you form any judgment as to the value of the land itself?

Ans. No; I don't know as anything was said as regards to the value of it at that time; I have no recollection of it.

Ques. Was there any pine on the lands?

Ans. I don't think that I saw a pine tree.

Ques. Well, did you talk about that there was no pine on the land?

Ans. I don't think that was mentioned in the conversation, whether there was or was not.

Ques. In what conversation?

Ans. At any time between my brother and I when we were going over the land.

Ques. Then you did have some conversation together while you was there?

Ans. We talked some while we were out looking the land over.

Ques. What did you tell Pratt the day you went to see him at Traverse City?

Ans. I think I told him that my brother wanted to get him to assist him in the land case, or something to that effect; don't know that these are just the words exactly, but something to that effect.

Ques. What did you tell him about the case itself?

Ans. I don't know that I can give the exact words, but I can give it in substance. I think I told him that he had advertised a claim, and he thought best to have an attorney, and Mr. Pratt's

266 reply was that he didn't think it worth while, as the evidence was all taken down by the register of the land office, and the services of an attorney he didn't think would help his case. I think he said that it was different from taking evidence in other courts; that attorneys had no chance to argue the case, or something to that effect.

Ques. Did you tell him who the contestants were in the case?

Ans. I am not positive, but I think I did.

Ques. Well, what did you tell him about what Johnson had done or had not done that led your brother to advertise the claim?

Ans. I have no recollection of telling him anything about the case no further than I have stated.

Ques. Well, why didn't you do it if you wanted his services?

Ans. From the reply he made to my first question to him, as stated, concerning an attorney.

Ques. Did he ask you?

Ans. I don't think he asked me anything about the case at all.

Ques. Now, explain, witness, how that happened.

Ans. Well, I think, as near as I can recollect, Mr. Pratt made this

remark, that there was not more than one case in ten where an attorney's services were valuable in cases of that kind.

Ques. Now, witness, is your recollection clear in relation to what took place between you and Pratt, and you didn't tell him your brother's case?

267 Ans. As near as I can recollect, I have stated all the conversation that took place between me and Mr. Pratt; I know he didn't ask me the details of the case.

Ques. Could you have given them to him if he had?

Ans. Why, perhaps I could have told him some things, but nothing material.

Ques. What is your opinion about Seth C. Moffatt, whether he is an honest man or not, and an honest officer?

Ans. From my acquaintance and business dealings with him, I consider him an honest, upright, and straightforward man.

Ques. Well, sir, if you consider Seth C. Moffatt an honest, upright, and straightforward man, what did you go to the trouble for of making a copy of the testimony of Enos Johnson in this case, especially when you had no interest in the case?

Ans. For future reference.

Ques. What did you want it for future reference for?

Ans. To place in the hands of an attorney at Washington.

Ques. What attorney?

Ans. Mr. Bell & Thompson.

Ques. Did you copy the testimony of all of the witnesses?

Ans. I copied a portion and my brother the balance of all of the evidence taken at that trial.

Ques. Did you tell your brother what you were taking a copy for?

Ans. I think not.

268 Ques. Didn't he ask you what you was taking a copy for?

Ans. No, sir.

Ques. You done that voluntarily?

Ans. I done it without any one asking me to take it.

Ques. You was looking out for fighting it?

Ans. No, sir.

Ques. Were Bell & Thompson engaged in the case then?

Ans. No, sir.

Ques. Then that was the first you knew of the case yourself, what you learned that day?

Ans. That was the first opportunity I had of knowing what the evidence was in the case.

Ques. Why, hadn't you heard what your brother hoped or expected to prove by his witnesses?

Ans. I was not posted as to what my brother and his witnesses were going to swear to.

Ques. Witness, why don't you answer my last question; don't you know how, or don't you want to?

Ans. I have answered it.

Ques. Can't you answer it in any other way truthfully but what you have?

Ans. I know of no better answer to give.

Ques. Witness, did you and Mr. Pailthorp act as agents or attorneys for Mr. Johnson to help him to get that land?

Ans. I did at said Johnson's request make an effort in the fall of 1875, winter of 1875 & 1876, try to get two additional eighty acre claims for said Johnson.

Ques. Now, witness, in the conversation you had with Mr. Johnson, in the fall of 1875, or at some other time, didn't he tell
269 you about his wife's sickness, and why she didn't come in the first place, about her staying back there in Gaines, and didn't you tell your brother of it, and didn't you put your heads together to get that land and make that one of the ways of getting at it?

Ans. No, sir.

Ques. Witness, how is it that you can so distinctly and clearly remember the talk between you and Mr. Pratt at Traverse City, what you said and what he said, & all about it, and all of, and yet cannot remember anything about the talk you had with your brother over on that land only a few days before; please just explain that, will you?

Ans. My conversation with Mr. Pratt was concerning this case; the conversation at the time we were on the land was not, to the best of my recollection, anything concerning this case.

Ques. If you recollect the conversation on the land, how can you say that it was not concerning this case?

Ans. I think if it had been I would have recollected a portion of it, if it had been concerning this land case.

Ques. You went over there to look over the land, to see about the timber, and yet you don't know what you went over there for; how is that?

Ans. It was just what I was there for, to see the land and the timber.

Ques. Then why did you swear that your brother did not tell you what he wanted you to go over there for?

Ans. Because it is a fact.

270 Ques. And it is a fact that your brother didn't tell you anything about this case before you went to Traverse City?

Ans. I stated that he did tell me that he had advertised the claim of the Johnson homestead.

Ques. Did you swear on this examination that you went to Traverse City voluntarily, and that you didn't know, and your brother didn't tell you what his case was or what he hoped or expected to prove by his witnesses?

Ans. I did swear that I went there voluntarily, and I think I stated that I was not posted in regard to what my brother and his witnesses were going to swear to.

Ques. Witness, why don't you answer my last question?

Ans. I have done so.

Ques. Didn't you swear your brother didn't request you to go to Traverse City?

Ans. I think I did; I am not quite sure.

Ques. When you went over to look at that land, to examine as to

its value on account of its timbers, didn't you know or understand that you were going to Traverse City to swear to the result of *of* your examination in case you found the land was not valuable chiefly on account of its pine timber?

Ans. I expected to be present at the trial.

Ques. Who was the other witness as to the value of the land beside yourself?

Ans. I will not state positively, but I think it was Job Scott.

271 Ques. A particular friend of yours, was he?

Ans. No, sir.

Ques. Did he go there that day with you?

Ans. No, he did not.

Ques. When did he go to look at it?

Ans. That I could not say.

Ques. Who sent off the copies of the testimony you took to Washington?

Ans. I am not quite sure whether it was my brother or myself.

Ques. If he sent it did you tell him where to send it, to whom?

Ans. Yes, if he sent it; but if my memory serves me right I sent it myself.

Ques. Had Bell & Thompson worked for you before that?

Ans. Well, I am not quite sure as to that; they have done quite a good deal of business for me; I would not say whether before that or not.

Ques. Did you swear that you took those copies on purpose to send to Bell & Thompson?

Ans. I swore that I took them on purpose to place them in the hands of an attorney at Washington.

Ques. Is that all that you swore to in that regard?

Ans. For future reference.

Ques. Didn't I ask you what attorneys, and didn't you answer Bell & Thompson?

Ans. You asked me what attorneys, and my answer was Bell & Thompson.

Ques. Didn't you see the affidavit which your brother William H. Lee made concerning the abandonment of those homestead lands by Johnson.

Ans. I think not.

272 Ques. When he told you he intended to apply for the lands, didn't he tell you he had made the affidavit upon which the abandonment was based?

Ans. No, sir.

Ques. When Johnson came to see you in the fall about getting the additional entries it was in addition to these same lands that he had entered, was it?

Ans. It was.

Ques. When he came to see you in the fall of 1875 you understood that he had entered these lands in question before that time as a homestead?

Ans. Yes, sir.

Ques. Now, you know that when you went over there to look at these same lands with your brother, didn't you?

Ans. I knew that my brother had avertised these lands when I went over; I knew that Mr. Johnson had entered these lands as a homestead, and that they were advertised by my brother.

Ques. And yet knowing all these things, and that you went over there to examine as to the timber, you and your brother didn't talk anything about Johnson or his claim, nor the value of the land, nor the improvements, nor that your brother was going to apply for it, nor anything about what your brother intended to do, is that so?

Ans. Nothing further than I have stated in my previous answer.

273 Ques. Witness, why don't you answer my question?

Ans. I have done so to the best of my ability.

Ques. Why didn't you tell your brother that day when you came to see the land and the house and the improvements upon it, with a family living right there then, that that was pretty sharp practice to try and get these lands under these circumstances away from Mr. Johnson?

Ans. I was not his adviser.

Ques. You thought of it, didn't you?

Ans. No, sir; I did not.

Ques. You didn't even talk about it?

Ans. There was no suc- conversation passed between us.

Redirect by Mr. PRATT:

Ques. You consulted witn me in reference to your brother's homestead trial; where did you find me?

Ans. I think it was on the walk, near your office.

Ques. Do you remember my giving you my reason why I could not attend the trial, and instructed you that all that was necessary to be done would be to ask the questions and draw out the facts with reference to what Mr. Johnson had done?

Ans. I think that you stated that you had a case and it wouldn't be worth while for you to attend. I think the above is in substance what was said.

Ques. Now, to refresh your recollections, wa-n't I just about

274 leaving, going away, and didn't I inform you of that fact, and and say to you that you could get along just as well without me?

Ans. I am satisfied that I met him on the walk, and he told me either that he had a case to tend or that he was going away. I am not certain, but it was on the walk in Traverse City.

(Signed) A. S. LEE.

Taken, subscribed, & sworn to before me, this 26th day of June, 1880.

(Signed) EZRA C. BARNUM,
Notary Public.

275 & 276 JOB SCOTT, a witness produced, sworn, and examined on the part of the defendant and in his behalf, testified as follows, that is to say:

Ques. State your name, age, residence, and occupation.

Ans. My name is Job Scott; age, 36 years old; residence, in the township of Little Traverse, Emmet county, Michigan; by occupation a farmer.

Ques. Are you acquainted with the parties to this suit?

Ans. Somewhat acquainted with them.

Ques. Are you acquainted with the lands in controversy in this case?

Ans. I am.

Ques. When did you first become acquainted with these lands?

Ans. In April, 1875.

Ques. Did you move on to lands in the vicinity of these lands at that time?

Ans. I did in that year.

Ques. State when you moved on to your lands, and how far they were located from the lands in question?

Ans. I moved on them the last of Sept., and they were in a half a mile—they were half a mile apart.

Ques. From April until September, state whether or not you saw these lands in question frequently?

Ans. I did up to the 25th of June.

277 Ques. How was [it] after the 25th of June?

Ans. I went down to Ionia county after my family at that time and returned the last of September, and moved on to my own homestead at that time.

Ques. State whether since then, and up til- the time of the Johnson homestead trial at Traverse City in September, 1876, you saw the lands in question frequently?

Ans. I did.

Ques. In April, 1875, when you first became acquainted with these lands, state whether there was any improvements on them or not?

Ans. Well, there was an old Indian clearing on it that had been cleared years before and partly growed up to brush and small trees; some places there was half an acre, and in some places an one and a half to two acres, and in some places more than that, there was hardly any brush at all, and there was a shanty that had been built previous; that Mr. Johnson told me he had put up the year before.

Ques. Up to the time you left Little Traverse to go to Ionia for your family had there been any other improvements made on these lands?

Ans. I believe they had; I think they had cleared some of the brush and ploughed a little of it.

278 Ques. From that time and up to the time of the homestead trial at Traverse City, in September, 1876, what improvements had been made upon these lands?

Ans. Well, I should think there was five or six acres cleared off and partly fenced; some of it was board fence, some of it log fence,

some of it poles and brush; there was a house that had been built on it, and a stable.

Ques. State how much of this improvement had been made previous to the 21st of June, 1876.

Ans. Well, sir, I think all the improvements had been done then, with the exception of some of the board fence; I think they were building board fence at the time or just after that complaint was made.

Ques. State, Mr. Scott, the size of the house that had been built upon these lands.

Ans. I never measured it, sir, but I should think though it was somewhere in the neighborhood of 16 x 20 or 22; a one-story house.

Ques. State whether it was made of rough or planed lumber.

Ans. Rough.

Ques. Do you know about how much such lumber would cost a thousand feet, at that time?

279 Ans. Well, in the neighborhood of ten dollars a thousand.

Ques. About how much lumber would it take to build the house?

Ans. Well, I should think in the neighborhood of twelve or fifteen hundred feet.

Ques. State whether the floor of the house was rough or planed lumber.

Ans. Well, sir, I don't know; my impression is it was rough.

Ques. Was it ceiled over head on the inside or plastered?

Ans. Neither one, I think, the last time I was in the house.

Ques. State what, in your judgment, the material that was used in the construction of the house was worth at that time.

Ans. I think fifty dollars would cover the whole of it, sir.

Ques. What, in your judgment, was it worth, and would it cost an acre to clear off the lands that were cleared, that you have referred to?

Ans. Well, sir, I think ten dollars would be a big figure.

Ques. How much was it worth a rod to build the board fence that was built on the land?

Ans. It might be worth sixty or seventy cents a rod the way it was put up, and the posts that were used in constructing it.

280 Ques. Does that amount cover the value of the labor and material used in building the fence?

Ans. I think it does; yes.

Ques. What, in your judgment, was the value of all the improvements that had been made on these lands up to the time of the homestead trial at Traverse City, in September, 1876?

Ans. Well, I think I could have done the whole of them for in the neighborhood of two hundred or two hundred and fifty dollars.

Ques. Was that the value of the improvements, in your judgment?

Ans. I think it is.

Ques. Do you know who built this house—that is, of your own knowledge?

Ans. No, sir.

Ques. When you returned and moved on to your homestead, in September, 1875, who, if any one, did you find living on these lands?

Ans. Robert Stauffer.

Ques. When did you first see the complainant, Enos Johnson, on these lands?

Ans. From my best recollections, I think it was some time in October, 1875.

Ques. Do you know where he was stopping then—who he was stopping with?

Ans. With his son-in-law, Robert Stauffer.

281 Ques. Do you know how long Mr. Johnson remained upon the homestead at that time?

Ans. I do not; I think, though, it was some time in December; I don't know exactly.

Ques. Did you know who he was at that time?

Ans. I did.

Ques. After he left, in December, or when he did leave, when did you next see him again?

Ans. I think it was in June, 1876.

Ques. Where was he then?

Ans. On the place in question.

Ques. Up to that time, had you seen any of Mr. Johnson's family with him there on the homestead?

Ans. No.

Ques. At that time who, if any, of his family did you see with him?

Ans. I saw a woman who was said to be his wife.

Ques. Where was she when you saw her?

Ans. She was standing in front of the house.

Ques. Did you see her after that time?

Ans. I did.

Ques. How often?

Ans. Once, I believe.

Ques. Where was she that time?

Ans. She was going up by my place—her and her daughter and Mr. Stauffer. I wont say now whether Mr. Johnson was with

282 them or not. They were going up to Mr. W. H. Thomas' a visiting.

Ques. How far was it to Mr. Thomas', and in what way were they going; were they on foot or on horseback?

Ans. Well, sir, from where they started to where they were going it was in the neighborhood of five or six miles, and they were neither afoot or horseback.

Ques. State what kind of a team and conveyance, if any, they did have.

Ans. They had an ox team and a wagon.

Ques. Did you see them on their return from the visit?

Ans. I did.

Ques. When was it?

Ans. It was on Sunday.

Ques. How long after you saw them go on the visit was it they returned?

Ans. I wouldn't say for certain whether it was the same day or the next day; my impression is it was the same day.

Ques. What kind of a road was it between Mr. Stauffer's and Mr. Thomas' that they had to drive over?

Ans. Just an underbrushed road through the woods.

Ques. Was it smooth or rough?

Ans. In my judgment it was pretty rough.

Ques. Do you know about what time it was—what month—that you saw her out riding?

283 Ans. I think it was near the last of July.

Ques. Was you present at the homestead trial, at Traverse City, in September, 1876, in relation to these lands, and did you hear the testimony given by Enos Johnson at that time before S. C. Moffatt, Esq., register of the United States land office?

Ans. I did.

Ques. What, if anything, did Mr. Johnson say in giving his testimony in relation to his intention to give these lands to his son-in-law, Stauffer, when he should obtain title to them?

Ans. I can't word it exactly as he did, but the meaning of it was he meant to give them to him; that was the way I understood it, any way.

Ques. In giving his testimony at that time and place did he state, in substance, as follows: "I have intended to give him (meaning Robert Stauffer) the land (meaning the homestead in question) when I get my title?"

Ans. I think he did.

Ques. State whether, immediately after the trial of the homestead case at Traverse City, your attention was called to what Mr. Johnson had sworn to in relation to his intention to give this land to Mr. Stauffer, and whether your recollection of that testimony was not clear at that time, and has been since, of the fact that Mr. Johnson did testify, in substance, as you have now stated.

284 Ans. I was and has.

Ques. State whether at that homestead trial Mr. Johnson, in giving his testimony, did swear and state that he had voted the spring before in Gaines, Kent county, Michigan, or words to that effect.

Ans. He did.

Cross-examination by complainant's solicitor:

Ques. What have you been doing during the last eight or ten years?

Ans. I don't see what that has to do with this case.

Ques. What have you been doing during the last eight or ten years?

Objection, that it is incompetent, irrelevant, and immaterial, and not proper cross-examination; that the witness is under no obliga-

tion to relate where he has been nor what he has been doing, and that it is no matter of inquiry in this case.

Ans. I have been eating, drinking, sleeping, been here in this court, and I have been home and back again, and been around town.

Ques. Have you been in the employ of the defendant?

Ans. I have been here as a witness, sir, if that will suit.

Ques. Have you told the defendant what you would swear to on this case?

Ans. No, sir.

Ques. You never did?

Ans. No, sir.

285 Ques. When was it that you was particularly requested to remember that Johnson at the trial at Traverse City swore that he intended to give these lands to his son-in-law, Stauffer?

Ans. At that time and place.

Ques. Who told you to so remember?

Ans. I think it was Mr. Lee.

Ques. Which Lee?

Ans. The defendant in this case.

Ques. Had you and the defendant in this case talked together about the contest to come off at Traverse City before that trial occurred?

Ans. No, sir.

Ques. Do you swear to that positively?

Ans. I do; that is, within a couple of days or such a matter before the suit.

Ques. Then before that time you and he had takled about it?

Ans. Nothing only at that time, he asked me to go down as a witness.

Ques. And you told him what you would swear to?

Ans. No, sir; I had not.

Ques. Had you told him what you knew about the Johnson land and Johnson's residence upon it?

Ans. When he asked me I did.

Ques. When did he ask you?

Ans. I believe it was about two days before the trial.

286 Ques. What did he say when he asked you?

Ans. Why, he asked me if I would go down as witness for him.

Ques. Is that all?

Ans. Yes.

Ques. When was it you told Mr. Lee, the defendant, if ever, what you knew about the Johnson lands, or how much Johnson had lived on the same?

Ans. I think on the 19th of September, 1876.

Ques. Never before that day?

Ans. No, sir.

Ques. So, before the 19th of September, 1876, you had not told defendant Lee anything about what you knew concerning John-

son's land or his residence on the same, nor what you would swear to?

Ans. I did not.

Ques. Had you told anybody before that day?

Ans. No, sir.

Ques. By the way, witness, what did you go to Tranverse City that day for?

Ans. As a witness.

Ques. For whom?

Ans. The defendant.

Ques. Was you sworn?

Ans. I was.

Ques. Did you testify?

Ans. I did.

Ques. Had you been subpœnaed to be there?

Ans. What was it Lee said to you? State his language as
287 near as you can recollect it, when he asked you to remember that Johnson swore that he intended to give these lands to Stauffer.

Ans. I don't know as I can state his language just exactly the way he spoke it. He first merely stated that he wanted me to bear in mind what the old man Mr. Johnson had sworn to.

Ques. Who was present when he told you that?

Ans. His brother and himself and myself; there was three of us.

Ques. You mean by his brother, A. S. Lee?

Ans. I do.

Ques. Now, Mr. Scott, do you swear positively that at Traverse City, on the 19th of September, 1876, William H. Lee, the defendant, told you to remember that that old Mr. Johnson swore that he intended to give these lands to his son-in-law, Stauffer?

Ans. I do.

Ques. What reason did Lee assign for wanting you to particularly remember that?

Ans. Why, he didn't tell me any reason exactly.

Ques. Have you and he frequently talked about it since then?

Ans. Oh, we have several times.

Ques. Did he ask you more than once to remember that fact or only just at that time?

Ans. I don't know that he did.

288 Ques. How many times have you and he talked about this matter before now?

Ans. I don't know as to the number of times.

Ques. Quite a number?

Ans. Quite frequently.

Ques. Well, there has now been kind of a tacit understanding between you and Lee, hasn't there, for you to stand by him in this contest with Johnson about these lands?

Ans. No, sir; there has not, and nothing said about my standing by him in no way, shape, nor form. I am just subpœnaed here as a witness from the circuit court of this county.

Ques. Weren't you one of the witnesses for Mr. Lee who, on his application to enter these same lands, swore that they were not chiefly valuable by reason of the amount of fine timber thereon?

Ans. I don't understand the question.

Ques. Was you one of the witnesses for Lee when he made application to enter these lands as a homestead?

Ans. I was.

Ques. Now, when was that?

Ans. The same day of the trial at Traverse City.

Ques. Do you know what you swore to then?

Ans. Why, I swore that they were worth more for farming lands than they were for anything else, than they was for lumbering.

Ques. How long have you been acquainted with Lee?

289 Ans. Since some time, I believe, in June, 1876.

Ques. When did you and he first talk together about these lands?

Ans. About two days before the trial.

Ques. What was that talk?

Ans. He asked me if I lived up there in that section of the county in the neighborhood of these lands, and he asked me if I would go down to Traverse City for him, and I told him I didn't know whether I would be any good to him or not. He asked me then if I would go down and tell them just what I did know, whether it would be of any good or not—tell just what I did know. I think those were the words, pretty near to that effect, as near as I can remember, but he didn't asked me what I did know about them at all, and I didn't tell him.

Ques. Did you tell him before the trial at Traverse City anything about what you knew or what you would swear to concerning how much Mr. Johnson had been on the lands or off from them after he entered them and before they were advertised?

Ans. No, sir; I did not. I never had but the one conversation with him, that is the one I have stated.

Ques. Now, Scott, do you know or have you heard from

290 any one how the defendant Lee came to go and complain against these lands and advertise them, claiming that Mr. Johnson had abandoned them?

Ans. I do not know, sir, how he came to do it, when he came to do it, any way about it. The first I knew about it was I saw it in the Little Traverse paper, sir; and that is all I know about it, sir; I know nothing; Mr. Lee never told me.

Redirect:

Ques. At the time that Mr. Lee advertised these lands, state, if you know, whether the general impression among the people in the vicinity of the land was not that Mr. Johnson had entered these lands for a speculation?

Objection.—Complainant's solicitor objects to the question, that it calls for immaterial, irrelevant, and incompetent evidence.

Ans. I don't know what the opinion was.

Ques. At that time was Mr. Johnson known as a resident of that township?

Ans. I don't know; I don't think his name was ever registered or he ever voted here.

(Signed) JOB SCOTT.

Taken, subscribed, and sworn to before me, this 30th day of June, A. D. 1880.

EZRA C. BARNUM,
Notary Public in and for Emmet Co., Mich.

291 The defendant, WILLIAM H. LEE, being sworn in his own behalf, testified as follows, that is to say:

Ques. Where do you reside, what is your age and occupation?

Ans. I reside in Little Traverse, Emmet county, Michigan; am 39 years of age; during the last nine months have been teaching the Little Traverse school.

Ques. State, Mr. Lee, if you were present at Traverse City on the 19th of September, 1876, at the time of the homestead trial in reference to this land in question.

Ans. I was.

Ques. Did you hear the testimony of Enos Johnson, the complainant, given at that trial?

Ans. I did.

Ques. At that time state what, if anything, Mr. Johnson testified to as to what his intentions were about giving this land to his son-in-law, Stauffer, after he should have acquired a title to it.

Ans. I think he testified that he intended to give him the land when he, Johnson, got his title.

Ques. At that time and trial did Mr. Johnson testify and swear, in substance, that he had voted the spring before at Gaines, Kent county, Michigan?

Ans. He did.

292 Ques. At that time and trial did Mr. Johnson state and swear, in substance, that he had been on the place—meaning the homestead—a little over three months since the entry?

Ans. I asked Mr. Johnson at that trial a question in substance as follows: How long he thought he had been on the place altogether, to the time it was advertised? His answer was three months, or about three months; I don't remember which.

Ques. At that time did Mr. Johnson testify to the value of the improvements he had made upon these lands? If so, state what his testimony was as to the value.

Ans. He stated he thought the improvements on the place was worth about two hundred dollars.

Ques. Was you present and did you hear the testimony given by Robert Stauffer, on his examination as a witness in this case?

Ans. I have been present most of the time; do not think I have heard all the testimony he gave here.

Ques. Did you hear his testimony in regard to your offering him forty acres of land if he would get off from the homestead and

get Mr. Johnson to let you alone for what you had done; did
293 you hear his testimony on that point?

Ans. I heard him testify to that.

Ques. Well, sir, state whether that testimony was correct or not.

Ans. I do not think it was; at least it is not correct, if my memory serves me right, as to that conversation.

Ques. Did you have any conversation with him about the matter? And, if so, what was it.

Ans. We had a conversation, as he stated, on the steps of Mr. Parker's store. I can't remember but a very little of that conversation, but I do remember that he stated that some party had a tax title on eighty acres of land; he did not tell me who, but told me that this party had told him if he had to get off the land he would let him have this eighty acres. I told him that if he left the land I would assist him in getting that eighty acres. I don't remember that anything was said at that conversation about Mr. Burbeck's forty acres.

Ques. Why did you say to Mr. Stauffer that you would help him to this eighty acres of land?

Ans. I understood that he had done the work, or the principal part of the work, which had been done up to that time
294 upon the lands in question, and it was to satisfy him for that labor that I made him this proposition.

Ques. Anything said at that time as to any amount that you were willing to allow him or pay him for his labor?

Ans. I think not.

Ques. Anything said about his indemnifying you or protecting you of Mr. Johnson for anything that you had done?

Ans. I think there was something said in regard to that.

Ques. What was it?

Ans. I think I told him that he was the man I understood had done the work, and the man I thought ought to be paid, if any one; there was something said about Mr. Johnson; I don't remember just what; my impression is I told him that I cared nothing for Mr. Johnson's interest there, if he had any, or anything that Mr. Johnson had done on the place.

(Signed) WILLIAM H. LEE.

Taken, subscribed, & sworn to before me, this 30th day of June, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public in and for Emmet County, Michigan.

295 ENOS JOHNSON, the respondent, being duly sworn, on his oath, says: I am the respondent; I first saw the land in fall 1874; I bought 500 ft. of lumber & built a shanty on the land; I built it myself; I made my entry Apr. 17, 1875; I sent my son-in-law up May 1st, 1875; he moved up; he was to work for me; I directed what he was to do; he cleared off the land and put up a house; he tore down the old shanty; I came up myself Oct. 5th; I stayed until about Christmas; I made my home on the land; I was

working on the land, & bought some lumber for house & fencing; while I was there there was no fencing done; my family at this time was a wife in Gaines, one boy, & some girls, & my son-in-law above spoken of as being one of the family; my wife's health from April, 1875, has been poor; I came up in March, 1876; I stayed two weeks; boarded with my son-in-law; did not do anything on account of snow; I came up again in June, 1876; my wife's health was better, and she came with me, and we have lived there since; the house was built in July, 1875; I paid for all the material put into the house; my son-in-law, Mr. Stouffer, has been in my
296 employ on the place all the time; I have a farm in Gaines, Kent Co.; when I entered the land it was for the purpose of making a home; Mr. Lee and Pailthorp both advised me to get the additional homestead entries, as I did not get them; I worked on my place; I estimate the improvements on the place at the sum of $200; I was living with my wife on the place June 15, 1876; it was advertised June 21st, 1876; I have never been off the place over six months at a time; I have been on the place for little over three months altogether since the entry.

Cross-ex.:

There was no particular agreement as to his pay. I was to pay him what his labor was worth. I had moved bed clothes, my clothes, &c., &c., on the land before it was advertised. Mr. Stauffer went to Little Traverse first before he went to the land; the land was not heavily timbered. I have four girls & one boy at home. Mr. Stauffer's wife was sick when my wife came up to stay; there was no bargain that he should have the land.

Redirect:

I have intended to give him the land when I got my title.

Cross:

297 I voted last spring in Gaines, Kent Co., Mich.; there was no question made as to my voting; I did not know anything about it. I am 63 years of age.

(Signed) ENOS JOHNSON.

Sub. & sworn before me, 19th day of Sept., 1876.

(Signed) S. C. MOFFETT, *Reg.*

EXHIBIT "D."

Referred to in the amended proofs.

EZRA C. BARNUM,
Notary Public.

STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Complainant, *vs.* WILLIAM H. LEE, Defendant.

I, Ezra C. Barnum, a notary public in and for the county of Emmet, do hereby certify that the foregoing depositions of Seth C.

Moffatt, Abner S. Lee, Job Scott, and William H. Lee were
298 taken before me, at the village of Petoskey, in said county, beginning on 22d day of June, A. D. 1880, at ten o'clock a. m. of that day, and continued from day to day 'til the 1st day of July, 1880, when said proofs were closed. That the foregoing testimony was taken on the part and in behalf of the said defendant, in pursuance of a stipulation signed by the solicitors for the respective parties in said cause, and attached to and returned with the complainant's proofs in said cause; that before making said depositions the said witnesses were duly sworn by me to testify the truth, the whole truth, and nothing but the truth relating to the cause aforesaid; that at the taking of the said depositions Messrs. Pailthorp & Newberry and E. S. Pratt, solicitors and counsel for said defendant, and Messrs. White & Dodge, solicitors for said complainant, appeared before me and put such questions and cross-questions to the said witnesses as they thought fit; and that the exhibit hereto attached was produced by the solicitors for said defendant, and marked Exhibit "D" by me and received in evidence.

Dated Petoskey, July 5th, A. D. 1880.

(Signed) EZRA C. BARNUM,
Notary Public in and for Emmet County, Michigan.

Fees, $43.85.

299 STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON, Complainant, *vs.* WILLIAM H. LEE, Defendant.

At a session of said court, held at the court-house, in the village of Little Traverse, in said county, on the 13th day of May, in the year one thousand eight hundred and eighty.

Present: Hon. Reuben Hatch, circuit judge.

This cause came on to be heard, and was argued by counsel, and therefore, upon consideration thereof, and on motion of Pailthorp and Newberry, of counsel for said defendant, it is ordered, adjudged, and decreed, and this court, by virtue of the authority therein vested, doth order, adjudge, and decree, that the complainant's bill of complaint do stand dismissed out of this court, with costs to be taxed.

(Signed) REUBEN HATCH,
Circuit Judge.

Countersigned.

(Signed) WM. R. BOWSER.

300 [Endorsed:] The circuit court for Emmet county. In chancery. Enos Johnson *vs.* William H. Lee. Decree. Received and filed Sept. 8th, 1880. Wm. R. Bowser, register.

301 STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

ENOS JOHNSON *vs.* WILLIAM H. LEE.

In this cause now comes the said Enos Johnson, the complainant

above named, and believing himself to be aggrieved by the decree made therein by the circuit court for the county of Emmet, in chancery, bearing date the 13th day of May, A. D. 1880, and entered with the register of said court on the 8th day of September, A. D. 1880, appeals therefrom to the supreme court of the State of Michigan, and hereby claims such appeal under the provisions of the statute in such case made and provided.

Dated this 16th day of September, A. D. 1880.

(Signed) ENOS JOHNSON.

302 [Endorsed:] The circuit court for the county of Emmet. In chancery. Enos Johnson *vs.* William H. Lee. Claim of appeal. Received and filed Oct. 18th, 1880. Wm. R. Bowser, register.

303 STATE OF MICHIGAN:

Supreme Court. In Chancery.

ENOS JOHNSON, Compl't & Appellant,

vs.

WILLIAM H. LEE, Def't & Appellee.

To the circuit court for the county of Emmet, in chancery:

The appeal heretofore taken in this cause from the decision of the said circuit court, in chancery, to the said supreme court having been heard and determined in said supreme court, in pursuance with the statute of said State in such cases provided, I herewith remit, attached hereto, the records & files sent from the said circuit court, in chancery, to the said supreme court, together with the proceedings and decree or final order of the supreme court in said cause, and all things concerning the same which have been had in said supreme court, or come to it.

In witness whereof, I have hereto set my hand & the seal of said supreme court, this 20th day of January, A. D. 1882.

[SEAL.] (Signed) CHAS. C. HOPKINS, *Clerk.*

304 *Special Orders.*

At a session of the supreme court of the State of Michigan, held at the supreme court-room, in the city of Lansing, on the 26th day of October, in the year one thousand eight hundred and eighty-one.

Present: The Honorable Isaac Marston, chief justice; Benjamin F. Graves, Thomas M. Cooley, James V. Campbell, associate justices.

ENOS JOHNSON, Compl't & Appel't,

vs.

WILLIAM H. LEE, Def't & Appellee.

This cause having been brought to this court by appeal from the circuit court for the county of Emmet, in chancery, and having been argued by counsel and due deliberation had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the circuit court for the county of Emmet, in chancery, be, and the same is hereby, reversed, vacated, and held for naught; and the circuit

court for the county of Emmet, sitting in chancery, is hereby ordered to enter a decree in favor of the said complainant and against the said defendant, granting unto him the relief prayed for in
305 the bill of complaint in this cause, with his costs of suit in the said circuit court to be taxed therein.

And it is further ordered, adjudged, and decreed that the complainant do recover of and from the defendant his costs on the appeal herein to be taxed, and that he have execution thereof.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and of the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this 20th day of January, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] (Signed) CHAS C. HOPKINS, *Clerk.*

306 Parties: Enos Johnson, compl't & app'l't, *vs.* William H. Lee, defendant.

Complainant's attorneys, White & Dodge.
Defendant's attorneys, Pratt & Davis.
Appeal from Emmet circuit. In chancery.
Costs, p. 2.00.

Date.	Proceedings.
1881.	
June 24.	Transcript filed.
" 25.	Motion to dismiss appeal.
" 25.	Motion denied, but $10.00 costs to defendant.
Feb'y 19.	Note of issue, April.
April 7.	Notice of hearing.
" 7.	Dismissed with costs of term.
June 7.	Motion to reinstate case.
" 7.	Affidavits, etc.
" 7.	Cause reinstated.
Aug. 4.	Note of issue, October.
Oct. 5.	Argued and submitted.
" 12.	Decree reversed.
" 26.	Decree entered.
" 15.	Remittiter to White & Dodge.
1882.	
Jan. 20.	Record to clerk of Emmet Co.

The above is [a] statement of proceedings in the supreme court in the above-entitled cause, dated at Lansing, Jan'y 20, 1882, and attest-d by seal of said supreme court & my signature.

[SEAL.] (Signed) CHAS C. HOPKINS, *Clerk.*

Received and filed March 31st, 1882.

(Signed) WM. R. BOWSER, *Clerk.*

307 STATE OF MICHIGAN:

The Circuit Court for Emmet County. In Chancery.

ENOS JOHNSON, Compl't, *vs.* WILLIAM H. LEE, Def't.

SIR: Take notice that at the opening of the next term of the said court, on the eleventh day of April next, or as soon thereafter as counsel can be heard, the said court will be moved to settle and sign a final decree in the above-entitled cause, in accordance with the prayer for relief of the said bill of complaint therein, and of the order of the supreme court of said State made in said cause on the appeal thereto; and you are herwith served with a copy of the said supreme court order, and also with a draft and minutes for such final decree in said cause as the complainant deems himself entitled to by virtue of said order.

Grands Rapids, Mich., March 28th, 1882.

Very resp't'y,

(Signed) WHITE & DODGE,
Compl't's Solicitors.

To Messrs. PRATT & DAVIS,
Of Counsel for Def't, Traverse City, Mich.

308 TUESDAY, *April 11th*, 1882.

At a regular term of the circuit court for the county of Emmet, and held at the court-house in the village of Harbor Springs, in said county, on Tuesday, the eleventh day of April, A. D. 1882.

Present: Hon. J. G. Ramsdell, circuit judge.

Court opened for business in due form.

ENOS JOHNSON, Complainant.
vs.
WILLIAM H. LEE, Defendant. } In Chancery.

This cause having been tried in this court and appealed therefrom to the supreme court of the State of Michigan, by whom the decree of this court made at the trial of said cause was reversed, and said cause was referred back to this court for final action, and the same having come on to be heard at this session of said court, and the court having heard the argument of counsel, and considered the action of the supreme court, thereupon, on motion of White and Dodge, solicitors for the complainant, it is ordered and adjudged by the court, now here, that a decree be, and the same is, granted in favor of said complainant, Enos Johnson, in ac-

309 cordance with the order of the supreme court.

310 STATE OF MICHIGAN:

The Circuit Court for the County of Emmet. In Chancery.

At a session of said court held at Harbor Springs, in said county, on the eleventh day of April, in the year eighteen hundred and eighty-two.

Present: Hon. J. G. Ramsdell, circuit judge.

ENOS JOHNSON, Complainant,
vs.
WILLIAM H. LEE, Defendant.

In this cause the complainant having heretofore appealed from the judgment, decision, and decree of this court to the supreme court of this State, and it now appearing to this court by a certified copy on file herein of the order of the said supreme court that said cause on said appeal was duly argued and submitted to the consideration of said supreme court by counsel for the parties, and that after due deliberation had thereon it was ordered and adjudged by said supreme court that the said decree of this court so appealed from be, and that the same was by said supreme court, wholly reversed, vacated, set aside, and to be held for naught; and it further appearing by said certified order that this court is ordered to enter final decree in this cause in favor of the complainant and against the defendant therein, granting to the complainant the relief prayed for in his bill of complaint, with his costs, to be taxed, and that complainant also recover of defendant his costs on
311 said appeal, to be taxed, and that he have execution therefor; and it further appearing to this court that due notice of said supreme court order, and to appear and settle this decree, has been served upon the solicitors for the defendant; and the said defendant now appearing by his solicitors of record, and this cause being now before this court for final decree therein pursuant to said supreme court order: Therefore, on motion of Messrs. White and Dodge, solicitors for said complainant, it is hereby ordered, adjudged, and decreed, and this court doth hereby order, adjudge, and decree, that the said complainant, Enos Johnson, is, and at the date of the filing of his said bill of complaint he was the just, true, legal, and equitable owner of each and every of the lands mentioned and described in his said bill, to wit: Of the west fractional half of the northwest quarter, and of the southeast quarter of the northwest quarter, and of the southwest quarter of the northeast quarter of section number seven (7), in township number thirty-five (35) north, of range number five (5) west, in said county of Emmet; and that he, the said complainant, from the time he entered said lands under the act of Congress commonly known as the homestead law, on the seventeenth day of April, in the year eighteen hundred and seventy-five, never afterward legally or equitably lost his right to said lands, or abandoned the same, nor did the same revert to the Government of the United States. And it is further adjudged that the said defendant, William H. Lee, procured his title to and patent of said lands, which are mentioned in said bill, in fraud of the said
312 complainant, and that from and after he so procured said title and patent and in so taking said title and patent said defendant held the same subject to the said complainant's said just and equitable title.

And it is further ordered, adjudged, and decreed that the said defendant, at his own proper cost and expense, and within thirty

days after the signing of this decree, execute and deliver unto the said complainant a good and sufficient deed of conveyance of said lands, and of every part and parcel thereof, free and clear of all incumbrances, therein and hereby granting and conveying to him, the said complainant, his heirs and assigns, the said lands in fee-simple, with the same title thereto and thereof which he, the said defendant, received from the said Government by virtue of his patent aforesaid.

And it is further ordered and adjudged that the said complainant be let into full, exclusive, perfect, and peaceable possession of said lands and of the whole of the same and the tenements thereon.

And it is further ordered, adjudged, and decreed that in case the said defendant fails or makes default in the execution and delivery of said deed as aforesaid, or in the delivery of said possession as aforesaid, then he, the said complainant, shall be, and he is, at liberty to record this decree in the office of the register of deeds of the said county of Emmet, and the same shall have virtue and effect to vest in said complainant, his heirs and assigns, the absolute and unencumbered title to said lands in fee-simple, freed from any and all claims or estate therein or thereto by the said defendant by virtue of his patent aforesaid, or by any person or persons holding or
313 claiming to hold said lands, or any parcel thereof, by, through, or in virtue of any act or deed of him, the said defendant.

And it is further ordered, adjudged, and decreed that the said complainant do recover of and from said defendant his costs in behalf of his suit in this cause expended, to be taxed.

And it is ordered, adjudged, and decreed that the circuit court commissioner of the county of Emmet ascertain the amount of the costs so awarded by the said supreme court as aforesaid to the complainant as aforesaid, and tax the amount of the costs awarded by this court as aforesaid to the complainant against the defendant.

And it is also ordered, adjudged, and decreed that the said circuit court commissioner take proofs, ascertain and determine the amount that the defendant paid to the Government of the United States for the said lands as the purchase price thereof, and the time when the same was paid, and compute the amount due for interest thereon annum, and that if the amount of said principal and interest exceed the amount of the costs so awarded as aforesaid by the supreme court, and the costs awarded by this court as aforesaid, that then, before the said defendant need to deliver to the said complainant such deed of said lands as he is above ordered to do, the from the date of said payment at the rate of seven per centum per said complainant shall pay or tender the difference between the total amount of all said costs and the amount of the said principal sum so paid by the said defendant as aforesaid and the said interest thereon, and in case the amount of the said costs so awarded by the said
314 supreme court, and the said costs awarded by this court, as ascertained as aforesaid by said circuit court commissioner, exceed the amount so ascertained to have been paid by said defendant to the Government of the United States and said interest thereon, or in case said defendant shall not appear before said circuit court com-

missioner at such time and place within said county as said circuit court commissioner shall direct (proper notice to be given to him thereof) and establish the amount so paid by him to the Government of the United States as aforesaid, then the said defendant shall forthwith execute and deliver to said complainant said deed as aforesaid, without any tender to him of any amount of money.

And it is further ordered, adjudged, and decreed that complainant have execution for the amount of costs of this suit that are to be paid to him over and above the amount applied as aforesaid upon the amount of the principal of the payment as aforesaid, made by said defendant to the Government of the United States, and the interest thereon as aforesaid (if any such residue there shall be), or if the said defendant shall omit, neglect, or decline to establish the amount of such principal and interest in the manner aforesaid, that then in either event the said complainant have execution for his said costs of this suit, to be taxed as aforesaid.

J. G. RAMSDELL,
Circuit Judge.

Examined and countersigned by me—
WILLIAM R. BOWSER, *Register.*

315 [Endorsed:] Filed April 12th, 1882. Wm. R. Bowser, register. Entered in liber one of Decrees, on page 476. Wm. R. Bowser.

316 STATE OF MICHIGAN, } ss:
County of Emmet, }

I, William R. Bowser, register of the circuit court for the county of Emmet, in chancery, do hereby certify that the above and foregoing is a true and correct copy of all the papers on file and of record entered in the above-entitled cause in said court, as appears of record in my office; that I have compared the same with the originals, and they are a true transcript therefrom, and of the whole of such originals.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Harbor Springs, this sixth day of October, A. D. 1882.

[SEAL.] WILLIAM R. BOWSER,
Register in Chancery.

317 *Suit in Chancery in the Supreme Court of the State of Michigan.*

In the Supreme Court of the United States.

ENOS JOHNSON, Complainant, *vs.* WILLIAM H. LEE, Defendant.

To the Honorable Stanley Matthews, Justice of the Supreme Court of the United States:

The petition of William H. Lee, defendant in the above cause, respectfully represents that he is a citizen of the United States and of the State of Michigan, and that, on the 13th day of July, 1878, he received a patent from the United States, conveying to him 160

acres of Government land, which he had previously entered under the homestead laws of the said United States.

That on the 22nd day of May, 1879, the above complainant filed a bill in the circuit court for the county of Emmet, in the State of Michigan, alleging that your petitioner had obtained his said patent by fraud, and in consequence of an erroneous construction of the act of Congress, commonly known as the homestead law, by the Hon. Secretary of the Interior, upon whose decision and under which said act the rights of your petitioner accrued and were vested, and prayed that your petitioner be decreed to transfer the title to
318 said land which he rightfully held under the patent aforesaid to the said complainant.

That upon the hearing of said cause the said circuit court dismissed the said bill of complaint; whereupon the complainant appealed to the supreme court of said State, it being the highest court of law or equity in said State having jurisdiction of such cases; which said court, on the 26th day of October, 1881, reversed the decision of the said circuit court, and remitted the cause to the same, with an order that the said circuit court enter a decree in favor of the complainant, granting unto him the relief prayed in his said bill.

That, in pursuance of said decree, the said circuit court, on the 11th day of April, 1882, entered its decree in said cause, directing and decreeing your petitioner to deliver to the complainant a deed of conveyance of said property, and in default that the said decree operate as a good and valid conveyance. That the records of the proceedings of said cause are now in custody of the said circuit court.

That the aforesaid decree of the said supreme court of the State of Michigan became and is now final, and from which your petitioner has no redress except by writ of error issuing from this hon-
319 orable court to the circuit court of said State.

And your petitioner further alleges that the rights of your petitioner were claimed under and vested in him by virtue of the act of Congress, commonly known as the homestead act, and that the said decree of the supreme court aforesaid involved a construction of the said act of Congress, under which your petitioner claims his rights aforesaid, and which said rights were decided adversely to him by said decree, as will from the copy of the record herewith presented [more fully appear]. That the writ of error, for which your petitioner hereby prays, is not intended to operate as a supersedeas.

That your petitioner hereby presents a good and sufficient bond, and prays that the same be approved, and that your honor will grant the writ of error, and sign the citation here presented; and your petitioner will ever pray.

WILLIAM H. LEE,
Petitioner.

By A. G. RIDDLE,
JAS. E. PADGETT,
His Solicitors.

320 [Endorsed:] Enos Johnson *vs.* William H. Lee. Petition for writ of error. Filed Sept. 2d, 1882. Wm. R. Bowser, register.

321 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the circuit court for the county of Emmet, State of [SEAL.] Michigan, being possessed of the record and proceedings upon remittitur from the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court upon a remittitur from the supreme court of the State of Michigan, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Enos Johnson, complainant, and William H. Lee, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, 322 or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-first day of August, in the year of our Lord one thousand eight hundred and eghty-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by— STANLEY MATTHEWS,
Associate Justice.

323 The United States of America to Enos Johnson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the county of Emmet, State of Michigan, wherein William H. Lee is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Stanley Matthews, Associate Justice of the Supreme Court of the United States, this twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-two.

STANLEY MATTHEWS,
Associate Justice.

324 On this 11th day of September, in the year of our Lord one thousand eight hundred and eighty-two, personally appeared Orrin B. Finlay before me, the subscriber, Clay E. Call, a notary public in and for the county of Emmet, & State of Michigan, and makes oath that he delivered a true copy of the within citation to Enos Johnson, in the county of Kent and State of Michigan, on the 8th day of September, 1882.

O. B. FINLAY.

Sworn to and subscribed the 11th day of September, A. D. 1882, before me—

CLAY E. CALL,
Notary Public.

Fees, $29.30.

Received the above in full.

G. W. DICKINSON, *Sheriff.*

325 Know all men by these presents that we, William H. Lee, as principal, Abner S. Lee and James Buckley, as sureties, each of Petoskey, Emmet county, Michigan, are held and firmly bound unto Enos Johnson in the full and just sum of five hundred dollars, to be paid to the said Enos Johnson, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with seals, and dated this second day of August, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately at a circuit court of the county of Emmet, State of Michigan, in a suit depending in said court, between Enos Johnson, complainant, and William H. Lee, defendant, a decree was rendered against the said William H. Lee, and the said William H. Lee having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Enos Johnson citing and

admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said William H. Lee shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) WM. H. LEE. [SEAL.]
" A. S. LEE. [SEAL.]
" JAMES BUCKLEY. [SEAL.]

Sealed and delivered in presence of—
(S'g'd) WATSON SNYDER.
" W. ALBRIGHT.

Approved by— (S'g'd) STANLEY MATTHEWS,
Associate Justice.

August 21, 1882.

326 STATE OF MICHIGAN, } ss:
County of Emmet, }

I, William R. Bowser, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that I am well acquainted with A. S. Lee and James Buckley, whose names as sureties are attached to the within bond, and further that they are each fully responsible for the amount of said bond.

Witness my hand and the seal of said court, at Harbor Springs, in said county, this fifth day of August, A. D. 1882.

[SEAL.] WILLIAM R. BOWSER, *Clerk.*

Endorsed on cover: Michigan, Emmet county circuit court. No. 351. William H. Lee, plaintiff in error, *vs.* Enos Johnson. Filed 10th October, 1882.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

WILLIAM LEE, *Plaintiff in Error*,
vs.
ENOS JOHNSON, *Defendant in Error*. } No. 82.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

This cause involves the right to certain lands in Emmet County, Michigan, formerly public lands of the United States. The bill was filed by the defendant in error, in the Circuit Court for that county, sitting in Chancery, on May 22d, 1879. Its material averments are as follows:

Johnson was a resident of Kent County, Michigan, at the time of filing his bill, and had been such for nearly twenty years prior to April 17th, 1875. A short time before that date, for the purpose and in good faith of acquiring a homestead for himself and family, he went upon the lands in question, cleared off a small parcel thereof and erected, for his own use, a dwelling house thereon. On April 17th, 1875,

he went to the proper local land office, and entered the lands, under the homestead law, obtaining the register's duplicate receipt. At the date of this entry, Johnson's wife was sick and living "at their home in Kent County," and could not safely be removed to the lands, and he was compelled to be with her; but in order to secure the lands, he employed one Stauffer, his son-in-law, to go upon the lands with his, Stauffer's, family and there remain in Johnson's employ, cultivating and improving the lands until Johnson's wife might so improve in health as to admit of his leaving her or taking her with him in his personal actual settlement on the lands. Stauffer, with his family, went upon the lands very shortly after April 17th, 1875, and remained, living in the dwelling house thereon, until April 10th, 1879, as Johnson's agent and hired man; during that time, with means furnished by Johnson cultivating and improving the lands, to such an extent that Johnson's expenditures, including his own work, amounted to $400. The lands have come to be worth $2,000. Stauffer never had any interest in the lands. Johnson did not enter them for Stauffer; but all that Stauffer did was as the "tenant and employee" of Johnson.

On October 5, 1875, Johnson personally went on the lands and there remained, living with Stauffer, and working until December 25th, when his wife's continued sickness compelled him to return to her in Kent County. In the spring of 1876 she appeared to improve, and on June 15th Johnson settled on the lands with her and there made his home, intending the same to be a permanent settlement and homestead for himself and family. He remained, working and improving the lands, until the latter part of September, when his wife's health again necessitated their return to Kent County; Johnson himself, however, on a date not given, again returned to the lands, and worked on the same until about January 1st, 1877, (a period of about two

months, as Stauffer says in his testimony—Rec. 33) when his wife's health again called him to her in Kent County. He returned to the lands again about May 1st, and worked on the same until October, when he again returned to his sick wife in Kent County, and "since that time he has frequently and for and during such times as he could be absent from his wife, lived on said lands, at no time abandoning them, and has never been even absent therefrom for a period of six months, and never for any length of time, without a fixed and settled determination to return to the same, and there establish his permanent home." In this wise, he retained possession, Stauffer remaining constantly on the lands as Johnson's agent, tenant and employee, until April 10th, 1879, when he left because of the conduct of Lee.

On June 19th, 1876, while Johnson and wife were actually residing on the lands (which, together with the other facts of improvement, &c., Lee well knew), Lee went to the local land office and complained that Johnson had abandoned the lands for a period of more than six months prior to that date; whereupon, the usual proceedings in contest were had before the register; and Johnson "there made proof before said register of all the facts hereinbefore stated, that had occurred up to that time, concerning the actual settlement upon said land, and their cultivation and improvement by him aforesaid; and of the facts concerning the continued sickness of his wife, and the reasons why he had not personally resided upon said lands all the time after he had 'entered' the same. [His] own testimony was also then taken *in writing*, in his own behalf, in which he substantially made the same statements as are herein set forth, showing, that [he] had never abandoned said lands, and the nature, extent, and value of his impovements thereon; all which testimony was afterward as [he] is informed, and believes to be true, made up in form, and by him, the said register, returned to the Commissioner of the General Land Office, at

Washington, D. C., and submitted to him for his decision as to the rights of [Johnson]."

The Commissioner of the General Land Office decided in favor of Johnson, but his decision was reversed by the Secretary of the Interior, who decided that Johnson "had abandoned said lands, and that the same had reverted to the United States and were again liable to entry and purchase by said Lee, or any other party, and again threw said lands upon the market," whereupon the lands were thrown open and Lee procured a patent for them on July 13th, 1878.

The Secretary, as appears from a letter now in Johnson's possession, stated that he based his decision upon two grounds: first, because in his testimony before the register, as transmitted to the General Land Office, Johnson is reported to have said that when he entered the lands he intended them for Stauffer, his son-in-law, and not for a personal homestead for himself; and second, that while personally off the lands and in Kent County, in the spring of 1876, Johnson had voted at an election in the town of Gaines. Both these statements, so reported as having been made in his testimony, are false, and he did not so testify. Both the statements were either written afterwards or fraudulently interpolated into his testimony by the register or some person unknown, with intent to defraud Johnson; which fraud he charges was perpetrated by Lee, or at his instigation, in order to defeat his, Johnson's, rights to the lands. That by means of this fraud Lee procured his patent. That Johnson voted, as stated, is not denied by the bill.

Johnson then having ascertained the grounds upon which the Secretary based his decision, attempted to obtain a rehearing, urging upon the Secretary the falseness of the statements attributed to him and of the report of his testimony, and "sent to said Secretary a large number of affidavits showing, by persons who were present at the examination at Traverse City, before said register, that [Johnson] never

testified as reported to said Secretary, and that each and both said purporting statements upon which he based his said decision were false and fraudulent interpolations, and upon said affidavits moved the said Secretary for an order granting [him] a rehearing or new trial of said controversy and the taking of testimony again; but said Secretary refused to grant such an order, insisting that such statements were reported to him through the regular channels and by proper subordinate officers, and he should consider himself bound to treat them as true, and remained firm in refusing to disturb the matter; and thereby [Johnson] was deprived of his legal rights and of a just opportunity to show the fraud which had been perpetrated upon him, and necessitated his appearance in this Court and complaint in the premises;" but the rehearing was refused.

By reason of the premises, the bill prayed that on being reimbursed the amount paid by him, less costs, Lee should be decreed to convey to Johnson, &c.

In his answer, filed August 6th, 1879, Lee denies all the material averments of the bill, and alleges that Johnson's wife was all the time in good health,—the story of her sickness being made up by Johnson, after advertisement of his abandonment, as an excuse for non-compliance with the homestead law; and that Stauffer was a co-conspirator with Johnson to acquire title to the lands fraudulently. With reference to the proceedings in contest, the answer asserts that Johnson's testimony was read over to him by the register before Johnson signed it; that Johnson admitted its correctness, and signed it with full knowledge and understanding of the same, and that it was reported to the General Land Office, exactly as given; denies that there was any change or interpolation in Johnson's testimony, or fraud of any sort; sets up the adjudication by a competent tribunal of the controversy in the premises; and criticises the

bill in respect of the insufficiency of its averments, and prays the same benefit of that objection as on demurrer.

The bill was dismissed by the Circuit Judge of Emmet County, on September 8th, 1880 (139). The Supreme Court of Michigan, on October 26th, 1881, reversed this decree, and directed the entry by the Circuit Court of Kent County of a decree in favor of Johnson (140–1). The opinion of that Court is appended, (*post*, p. 20).

Accordingly, on April 12th, 1882, a decree was rendered in the Circuit Court that Johnson was entitled to the lands in controversy, &c. (143).

The writ of error was sued out to reverse this action.

Assignment of Errors.

The Court erred:

1. In decreeing that the defendant in error is, and at the date of filing his bill of complaint was, the just, true, legal or equitable owner of the lands in the said bill described;

2. In decreeing that the plaintiff in error procured his title to, and patent of, the said lands in fraud of the defendant in error;

3. In decreeing that the plaintiff in error took his said title and patent subject to the just or equitable title, or any title, of the defendant in error;

4. In ordering the plaintiff in error to execute and deliver to the defendant in error a good and sufficient deed of the said lands, with the same title thereto which the plaintiff in error received by virtue of his said patent;

5. In ordering that the defendant in error be let into possession of the said lands;

6. In ordering that on default of the plaintiff in error to convey as aforesaid, the defendant in error be at liberty to record its decree, and that the same should have virtue and effort to vest in the defendant in error the title to the said lands;

7. In granting the relief prayed by the defendant in error, or any part thereof;

8. In not dismissing the bill of complaint of the defendant in error.

Argument.

I.

The Jurisdiction of Equity.

1. The rule which governs the courts in the effort to correct any error in a decision of the land officers has been so repeatedly stated here as to leave no room for doubt or misconstruction.

That principle is, that the decision of the officers of the Land Department, made within the scope of their authority, on questions of this kind, is, in general, conclusive everywhere, except when considered by way of appeal within that department; and that, as to the facts on which their decision is based, in the absence of fraud or mistake, that decision is conclusive even in courts of justice, when the title afterwards comes in question. But that in this class of cases, as in all others, there exists in the courts of equity the jurisdiction to correct mistakes, to relieve against frauds and impositions, and in cases where it is clear that these officers have, by a mistake of the law, given to one man the land which, on the undisputed facts, belonged to another, to give appropriate belief.

Marquez vs. *Frisbie*, 101 U. S., pp. 475–6;
Lytle vs. *Arkansas*, 22 How., 193;
Johnson vs. *Towsley*, 13 Wall., 72:
Shepley vs. *Cowen*, 91 U. S., 330;
Moore vs. *Robbins*, 96 U. S., 530;
Quinby vs. *Conlan*, 104 U. S., 420,
Smelting Co. vs. *Kemp*, *Id.*, 636;
Steel vs. *Smelting Co.* 106 U. S., 447;
Baldwin vs. *Stark*, 107 U. S., 463.

a. But where there is a mixed question of law and fact, and the Court cannot so separate it as to see clearly where the mistake of law is, the decision of the tribunal to which the law has confided the matter is conclusive.

Marquez vs. *Frisbie*, p. 476.

2. It has also been settled that the fraud in respect to which relief will be granted in this class of cases, must be such as has been practiced on the unsuccessful party, and prevented him from exhibiting his case fully to the department, so that it may properly be said that there has never been a decision in a real contest about the subject-matter. False testimony or forged documents even are not enough, if the disputed matter has actually been presented to or considered by the appropriate tribunal. The decision of the proper officers of the department is in the nature of a judicial determination of the matter in dispute.

Vance vs. *Burbank*, 101 U. S., pp. 519–520.

3. The fraud complained of must be extrinsic or collateral to the matter tried, and not a fraud which was itself in issue.

U. S. vs. *Throckmorton*, 98 U. S., 61;
See *Moffat* vs. *U. S.*, 112 U. S., 24;
U. S. vs. *Minor*, 114 U. S., 233.

And where a contest between individuals, for the right to a patent for public lands, has been brought before those officers, and both parties have been represented and had a fair hearing, those parties are concluded, as to *all* facts in issue, by the decision of the officers.

U. S. vs. *Minor*, Id., p. 243.

II.

The case on the pleadings and facts.

1. Insufficiency of the bill.

It will be noted that the bill fails to aver that the Secretary of the Interior exceeded his authority or jurisdiction in the premises; or that his conclusion was erroneous in point of law; or that Johnson had not a full and fair opportunity to present his rights to the Secretary. It is not even alleged that on such a state of facts as would appear from the testimony, if reported as Johnson claims it should have been, the Secretary's decision would have been wrong; and it assumes that if the testimony were in fact as reported, the Secretary's action was right. In respect of the question whether Johnson had a full and fair opportunity to present his rights, so far from alleging to the contrary, the bill in fact shows that Johnson had full and specific notice in a letter of the Secretary, that the testimony was reported as he now claims it should not have been, and that the alleged fraud and falsity therein were brought to the attention of the Secretary in affidavits, and a re-hearing because thereof was prayed; notwithstanding which, the Secretary refused a re-hearing and adhered to his decision, thus showing a clear and specific adjudication by the Executive Department of the Government of the very question now here insisted upon, viz: that of fraudulent change or interpolation in the testimony.

The answer, therefore, properly claims that the bill is demurrable; for not only does it not raise a question of erroneous action by the Secretary in point of law, but also it shows a deliberate adjudication of the question of fraud.

2. The decision below.

The sole charge of the bill aiming to impeach the action of the Secretary is, that that action was brought about by specific sort of fraud, viz.: the changing Johnson's testimony on the contest by the interpolation therein of two statements specifically pointed out. The sole question, therefore, presented for consideration by the bill is, whether those statements were, in fact, so interpolated.

The decision of the Supreme Court of Michigan, expressing no opinion on the truth or falsity of this question, and in no way disposing of it, goes wholly upon the ground that the decision of the Secretary was on a point not raised by the notice of contest; wherefore, and wherefore only, says the Court, Johnson is entitled to the relief he asks.

This view of the matter leaves wholly out of the account, the only question that can be considered upon an application of the sort herein made, viz: whether the applicant has shown himself entitled to the land in controversy. As a logical result of the view taken by the Supreme Court of Michigan, an applicant may have such relief as is herein prayed, no matter how far he may fall short of showing that he is entitled thereto, if only the Department of the Interior decides a contest upon a question not specifically made in the notice of contest. The Court simply ignores the one principle lying at the foundation of the jurisdiction of equity in such cases, viz: that another has what under the law the complainant is entitled to. Even if no other person were concerned, the Government itself would refuse a patent to an entryman if, on final proof, he failed to show compliance,

or showed non-compliance, with the requirements of the law; as, for instance, if it should appear that the entry was not *bona fide*, or was otherwise fradulent.

3. The case in the light of the testimony.

If, then, the bill might be said to raise a question whether the action of the Secretary of the Interior was erroneous in point of law, it would be proper and sufficient to urge the consideration just advanced, viz: that the Court will determine whether, in fact, the complainant shows himself entitled to a patent under the homestead law; and in determining this the Court would consider whether, under all the circumstances of the case, the complainant shows a *bona fide* settlement and residence by him on the lands in question. Passing the question whether, under the provisions of the homestead act (R. S 2,291), a complainant in such a case as the present should not aver and prove that he has not alienated any part of the land, except as permitted in R. S. 2,288, and, being a citizen of the United States, that he has taken or will take the oath of allegiance, let us consider the case of the defendant in error in the light of the facts as established by the the testimony.

As respects the question of settlement and residence upon the lands, it is of course assumed, in the very nature of the case on which relief is sought, that such residence has not been for the full term of five years required by the law. And the defendant in error also admits that his case falls far short of gratifying the requirements of the law as to any actual and continuous residence. His entry was April 17th, 1875. His visits to the lands, as alleged in the bill, were: From October 5th to December 25th, 1875, two months and twenty days; from June 15th to September 30th, 1876, two months and fifteen days; for a period of about two months (Rec. 33), prior to January 1st, 1877; and from

May to October, 1877, five months:—in all, in a period of about two years and a half, a few days over twelve months; of which time, but two months and twenty-six days, in a period of over one year and two months, were spent upon the land prior to the date of the advertisement of contest, (June 21st, 1876.)

To excuse his failure in respect of settlement and residence, Johnson pleads the sickness of his wife. In point of truth, this plea ill stands the test of examination. Johnson himself says, that at the time he first went on the lands, October, 1875, his wife did not go with him because she was not well enough, and that he acted on the advice of one Dr. Wright "in the matter of her not going" then. (95.) His wife did go with him in June, 1876, and while on the lands, "some days she felt pretty good, others she did not" (96); and in the winter of 1875–6, her health was "some days good and some days bad." Her trouble was *prolapsus uteri.* (97.) On cross-examination, in response to a question, whether at the time she left the lands she was better or worse than she had been during the first part of the time while there, he says: "She was well enough, so she thought she could stand a journey." (98.)

The physician, Wright, on cross-examination, could not tell her particular condition at the time he heard of Johnson's entry (24), but he says that it was three or four years prior to his examination, June 22d, 1880, that he was consulted as to the advisability of her going to the lands (27); and he visited, or was called to attend or treat her professionally, *four or five times* within the four or five years then last past. (26, 27, 28.)

Stauffer, a witness for Johnson, says that Mrs. Johnson "was sick," "her health was poor," when on the lands (32); that he thinks the reason she went away in 1876 was that her health was poor and the house was not warm enough for her (33). But while on the lands she would ride a dis-

tance of ten or eleven miles over rough roads in a lumber wagon drawn by oxen (53–4); in respect of which last statement, Job Scott, a witness for Lee, testifies to the same effect (131–2).

Henry Bechtel, also a witness for Johnson, who knew Johnson well, neither knew nor heard anything of Johnson's wife's health while he was living on the lands (65–6); he visited the Johnsons while on the lands in 1876, and heard of Mrs. Johnson leaving, but did not understand in any way that she left on account of her health; and at the time of making his entry, Johnson said nothing of his wife's being sick (67–8).

This is all the testimony on that point. It does not appear, nor is it pretended, that Mrs. Johnson was in any different condition of health at the time she last left the lands than at the time the entry was made, or at any time prior thereto. And Johnson made his entry in full knowledge of her condition, and, therefore, in full knowledge of the fact, if it was a fact, that because of her condition he could not meet the requirements of the law in respect of actual settlement and residence. The land office has uniformly, and properly, held that *bona fide* settlement and residence must be first established before excuses for absence will be received.

Harris vs. *Radcliffe*. 2 Dec., Dept. Int. 147;
In re *Abrams*, 3 *do*, 106.

All this, especially when considered in connection with the other suspicious features of the case, clearly indicates the truth of Lee's contention that the alleged sickness of Mrs. Johnson was conceived after the notice of contest, in desperate endeavor to evade the consequences of Johnson's failure with reference to settlement and residence.

Moreover, the land department has also uniformly held that residence must be in person and can not be by proxy;

that no settlement rights can be acquired through a tenancy or by virtue of acts done by an agent; that, if in a contest for abandonment the charge is not proved, but the evidence shows an illegal inception, the entry will be cancelled; that, "whenever such a state of facts is developed as establishes conclusively that an attempt is being made to acquire title to public land in fraud of the existing laws", the department may take such action in the premises as may be necessary to prevent the contemplated result; and that while the judgment in cases of contest should follow the substance of the notice and charge on which inquiry rests, yet, where fraud is shown, though not charged, it will justify cancellation of the entry.

Barbee vs. *Gilmore*, 2 Dec., Dept. Int., 146;
Zinkand vs. *Brown*, 3 do. do. 380;
McLean vs. *Foster*, 2 do. do. 175;
Leon vs. *Grijalva*, 3 do. do. 363;
(Citing *Dilla* vs. *Bohall*, 4 Copp., 162);
Hawker vs. *Fowlks*, 2 Dec., Dept. Int., 53, p. 55;
Smith vs. *Brandes*, 2 do. do. 95, p. 97;
Campbell vs. *Moore*, 3 do. do. 462.

Even had the Department not so held, the principle involved in these rulings would, as above suggested, govern a court of equity in dealing with cases of this sort; and the undoubted facts of this case conclusively negative any intention on the part of Johnson to settle on the lands *bona fide*, and make his home there. He had a complete establishment near the town of Gaines, in Kent County (42), of which he speaks, even in his bill, as his home; where he resided with his wife and children (42, 98.) There is no pretence that he ever took any step in the direction of breaking up his establishment, or moving his goods and effects to the lands in controversy; and in the Spring of 1876, nearly one year after his entry (although, he says that he did not so tes-

tify on the contest, yet in his testimony in this cause he admits as a fact that), he voted at an election in Gaines (98).

And the circumstances of Stauffer's entering into possession of the lands are most significant. Stauffer had entered a neighboring homestead on the same day Johnson entered his, on which he never moved, because he found that the lands he entered were not those shown him when he located them (40, 48). He cannot say, however, that he informed Johnson of this discovery before Johnson instructed him to go on the lands in controversy (40). When he left the lands he intended to go to his own entry, and it was about two months after residing in the township, in which they were, before he moved to the Johnson lands (49). He had no previous talk with Johnson about building for him on the latter's lands; on the contrary, he used the money he had intended for his own homestead in building the house on Johnson's; and Johnson furnished no money or material in respect thereof until after his visit in October, 1875 (50). He can give no idea whatever of the extent of Johnson's contributions or payments at any time. Johnson had no team or farming tools or implements on his place, and when he came on the lands he occupied the house with Stauffer, bringing with him, the first time he came, only a bed and some bedding and clothing (50, 50,–1), of which he seems to have taken the bed with him when he left (40–1); and when asked in respect of the articles left by Johnson, "Did he ever give them to you or your wife?" Stauffer says: "He never gave them to *me* that I know of." (50–1.) While on the place, Johnson and wife and the Stauffers all lived together as one family, Johnson furnishing provisions in part, and Stauffer the rest (90); and in his testimony, on the contest, as is undenied, Johnson stated that he *boarded* with Stauffer. (101.)

Leaving wholly out of the consideration the two disputed statements in the reported testimony of Johnson, is it not

clear then that, in the language of the Secretary of the Interior, the facts "justify the conclusion that Johnson cannot be considered a *bona fide* homestead claimant, acting in good faith, but rather that he is seeking, by a seeming compliance with the forms of law, to obtain a tract of land for his son-in-law, who has exhausted his homestead privileges." (106.)

But on the pleadings a single question is before the Court, viz: were the alleged interpolations in fact made in Johnson's testimony on the contest?

The burden of establishing this is on the defendant in error. He seeks to establish the truth of the charge by his own testimony, and that of others. With reference to the statement of his intention to give the land to his son-in-law, Johnson denies that he made it before the register (95); Stauffer says, "not that I remember." (36–7.) Bechtel says: "I think not, to the best of my knowledge and remembrance, under the direct examination." (59–60.) Another witness, Bell, says Johnson did not so testify. (71–2.)

With reference to the statement that he had voted in Gaines in the Spring of 1876, Johnson denies that he made it to the register (95); saying that the question was asked, but he did not say anything (99); but on the cross-examination, he admits that, as a fact, he did so vote (98). Stauffer says Johnson did not so testify to the register (38). But Bechtel says that, on cross-examination, Johnson did so testify (61); and even when plumply prompted, he could not remember that the question to that effect had been ruled out by the register as immaterial (62); though, *on the next day* after thinking the matter over (and, of course, in the solitude of his chamber), his recollection came fully up to the requirements in that behalf (65). Bell says that the question as to voting was asked but objected to, and no answer given (72).

Of these witnesses, all produced by the defendant in error, Stauffer heard Johnson's testimony before the register read over to him by that officer, after it had been written down and before Johnson signed it (44). Bechtel thinks he heard it also (63). Bell also heard it read over to Johnson so that he could understand it (74), and the question whether it was so read over was not asked Johnson, and he is wholly silent on the subject.

The only other witness produced by the defendant in error on this head is Standish, who was his attorney, at the hearing in contest. This witness says: "There was something said by him in giving his testimony in regard to his intention in homesteading the land described, and the ultimate disposition which he might make of said land. Speaking of the son-in-law, Stauffer, Mr. Johnson said that he, Stauffer, had no interest in said homestead by contract or otherwise, and that although he, Johnson, might eventually give said homestead to Stauffer, he was under no contract to do so, and that he had not homesteaded the same for that purpose, or for any purpose, except to make himself a home during his natural life." (87.) And "I should think that he did not swear that he voted in the township of Gaines in that spring election." (88.) Also, with reference to the signing by Johnson of his testimony, "My impression is that it was subscribed by Mr. Johnson, but it would rather be my impression that the substance Mr. Moffatt claimed of was written down, was then stated to him by the register, Mr. Moffatt." (89.)

For the plaintiff in error, A. S. Lee, his brother (117–8), Scott (132), and the plaintiff in error, all say that Johnson made both the disputed statements at the contest trial (136). And A. S. Lee (*ibid.*) says that Johnson's testimony was read over to and signed by him.

It was developed by the defendant in error, that before the testimony was transmitted to the General Land Office, and while it was in the Register's Office, a copy of it was made by the two Lees. But it is expressly denied that any changes, interlineations or additions, were made to Johnson's testimony after it was signed (118).

Moffatt, the register who sat at the contest trial, says that he remembers the contest trial, and took the testimony in writing. It was his usual custom to read the testimony over to the respective witnesses, and for them to sign it, and he presumes he did so in this case. He was compelled to take only what the witnesses said. No change was made in Johnson's testimony by him or any person to his knowledge. The testimony was not taken out of his office at the time it was copied by the Lees (114).

He has no recollection of any objection being raised or discussed on the trial, and in taking down the testimony he took all that he deemed material, and always took everything he was requested to take by the parties or attorneys, whether he *deemed it material or not* (115).

It is especially to be observed, moreover, that in the register's report of the testimony, Johnson's statement of intention to give Stauffer the land is reported as on re-direct examination; and there are distinct statements by him made subsequent to the disputed statements, viz: "There was no question made as to my voting. I did not think anything about it. I am sixty-three years of age." (101.)

This clearly indicates the absence of any fraud or irregularity in the report in the respect complained of. And, above all things, the original report of the register was, at the very time the testimony in this cause was being taken, in the possession of the register at Reed City, Michigan, to whom it had been sent by the Commissioner from Washington, with the other papers in the contest case, in anticipation of

being needed in this cause (108). Yet the complainant did not produce the original report or call for it; and a glance at it by the witness Moffatt, the register who made it, would have settled the question of any changes, in whose ever handwriting.

And the conceded fact that Johnson voted in another township nearly a year after his entry is, to the last degree, significant: First, as showing an absence of intention to settle and establish residence when he went on the lands in October, 1875, in which case he did not take up his residence thereon within six months, and this constitutes an abandonment; or, secondly, as showing an actual change of residence after entry, which, equally with abandonment, operates a loss of the entry. In either view, the defendant in error is without standing in court.

In conclusion, the defendant in error is without title to the relief sought by his bill. He avers no error of law by the Land Department, and he shows none. The question he raises as to the action of that Department, if any, is a mixed question of law and fact; as to which the court will not disturb the action of the Department. The fraud he charges is not only not proved, but also the very charge itself was considered and adjudicated by the Land Department. The settlement he attempts to show was by a *tenant*, for which *ex vi termini* as well as according to the uniform rulings of the Land Department, there is no place in a *homestead* law. He fails to show the actual and continuous residence required by the law, or satisfactorily to excuse his failure in this regard. The facts clearly established by the record, as well the voting in another township (which at the time of entry was, and for twenty years prior thereto had been, his *home*), after the entry as the other facts touching occupation and improvement, conclusively show an utter absence of that good faith required by both the letter and the spirit of the law of all

seeking to procure a homestead on the public lands. And the conceded fact of the voting in another township deprives the defendant in error of any standing in a Court of Equity.

ALBERT G. RIDDLE.
HENRY E. DAVIS,
JAMES E. PADGETT.
For the Plaintiff in Error.

APPENDIX.

OPINION OF SUPREME COURT OF MICHIGAN.

MARSTON, C. J. The complainant, in April, 1875, entered the lands in question under the United States homestead act. He afterwards made valuable permanent improvements thereon in buildings, clearing and fencing valued at from $300 to $500. Much of the work was done by the son-in-law of complainant who resided upon the land at the request and expense of the latter. The complainant resided upon the land a part of the time, and worked thereon, and a part of the time he resided in Gaines, Kent county, where he owned a farm and voted in the spring of 1876. While complainant and his wife were actually living upon the lands, and on the nineteenth day of June, 1876, the defendant made complaint to the Register of the Land Office that complainant had abandoned his entry for more than six months. Notice was given, a hearing had, and a decision was issued in favor of the complainant which on appeal to the Commissioner of the General Land Office was affirmed, but on appeal therefrom to the Secretary of the Interior was reversed and complainant's entry cancelled. Defendant thereupon took possession and has since acquired the title under a patent to these lands, and the bill in this case is filed to compel defendant to convey the title so acquired to the complainant.

It is now claimed that the decision of the Secretary of the Interior was conclusive, and that this Court cannot now inquire into the facts. It appears from the decision of the

Interior Department that the reversal was not because of an abandonment, but because on the hearing before the Register complainant had testified, in speaking of his son-in-law and the work done by him upon the land, "I have intended to give him the land when I get my title." And the further fact that complainant had resided with his family in another county and voted there in the spring of 1876, nearly a year subsequent to the date of this entry. And the conclusion of the Secretary from these two facts was that complainant could not be considered a *bona fide* homestead claimant acting in good faith, but rather that he was seeking by a seeming compliance with the forms of law to obtain a tract of land for his son-in-law who had exhausted his homestead privileges.

The Supreme Court of the United States in several cases has passed upon the authority of the officers of the Land Department, when acting under the authority given by Congress. The effect is that the decisions are in general conclusive except when reconsidered by way of appeal within the Department. That as to the facts on which their decision is based, in the absence of fraud or mistake, their decisions are conclusive even in courts of justice, when the title afterwards comes in question, while in their construction of the law applicable to the case their rulings may be reviewed and annulled by the courts. *Moore* v. *Robbins*, 96 U. S., 535, and cases cited. Without either recognizing or questioning the jurisdiction of the Secretary of the Interior in cases of abandonment under the homestead law, we may within the authorities referred to question the correctness of the conclusion arrived at by that officer in this case.

The charge made before the register against this complainant was that he had abandoned for more than six months the homestead entry made by him April 17, 1875, of the lands in question. The fifth section of the homestead act provides that the lands shall revert to the government if at any time, before the expiration of the five years, it shall be proven after due notice to the settler, that the person shall have actually changed his residence, or abandoned the said land for more that six months at any time. No complaint was made that complainant had changed his residence, or that he intended to give or convey to some one else the benefit of his entry, even if the latter could

have then been inquired into. The only question in issue under the notice was that of abandonment, and this was the only question that could have been or was inquired into by the register, or be considered on appeal by the officers of the Department. And if they disposed of the case finally on other grounds, their jurisdiction in the premises was not appellate but original, and this, it is not pretended, has been conferred. The register on the hearing and the commissioner on appeal decided that complainant had not abandoned the land, and upon this ground there never was a reversal. It clearly follows therefore that complainant is entitled to the relief prayed for and a decree will be rendered accordingly, reversing the decree below with full costs.

(The other justices concurred.)

Supreme Court of the United States.

October Term, 1885.

No. 82.

WILLIAM H. LEE,
Appellant,
vs.
ENOS JOHNSON,
Appellee.

STATEMENT OF FACTS.

This case comes up on a writ of error from the decision of the Supreme Court of Michigan, reported as Johnson vs. Lee, 47 Mich., 52. The bill was filed by Johnson to procure a conveyance of certain lands in Emmet County, Michigan, to which Lee had received a patent from the United States, and of which he was then in possession. Johnson entered the lands in question under the home-tead law (Rev. Stat. U. S. §§ 2289 et seq.) on April 17th, 1875, fully complying with all the the formalities required. Shortly after, about May 1, 1875 (R., p.

101) he sent his son-in-law Stauffer on to the land, where the latter lived and resided, in the employment of Johnson clearing, fencing and making improvements, assisted by Johnson personally at divers times until some time in April, 1879, when he was driven off the place by the defendant Lee. (R., p. 31.) In making these improvements Stauffer acted at all times as Johnson's agent. and was employed by him (Record pp. 110, 112, 96, 67, 30, 33, 40) Mr. Johnson, himself, having, at his old home in Kent County, a wife whose illness made it dangerous to move her at the time of his entry, (R., pp. 111, 23, 24, 33) left Stauffer in possession. The latter cleared about 12 acres, fenced, raised crops, built a small house and log barn and made improvements variously estimated and valued at from three to five hundred dollars (R., pp. 112, 55, 56, 29, 30, 32, 34, 58, 59, 130). These improvements were made by Johnson's orders, and at his expense. (R , 110–112 *passim* 96, 40.) They were begun very shortly after Johnson's entry in May or April, 1875. (R., pp. 111, 38, 39.) Owing to his wife's illness Johnson did not return to the lands until October 5, 1875, and then he remained till the latter part of December of the same year, (R., pp. 110–112 *passim*, 30, 39, 58, 59, 131) working upon the land with Stauffer. He was again on the lands for two or three weeks in February or March, 1876. (R., pp. 111, 112, 54, 57, 88, 95). He returned the third time, June 15, 1876, bringing his wife with him, and both remained until after the hearing before the Register of the land office, upon the complaint of Lee, the plaintiff in error, that he had abandoned the lands. (R., pp. 111, 32, 33, 41, 42, 56, 96 and 131.) That complaint was made before the Register, 19th June, 1876, while Johnson and his wife were actually residing on the lands. (R., pp. 111, 3, 34, 41, 57, 59.) The hearing was had before the Register, September 19, 1876. Up to that date he had not been absent from the lands for a period of six months at any one time since the date of his entry in April, 1875. (R., pp. 111, 37.) His entry was made bona fide to secure for himself a homestead under the act. (R., pp. 111, 96) At the trial before the Register, Lee, seems to have attempted to prove, not only that Johnson

had abandoned the homestead, but also that he had entered it, not to secure a homestead for himself, but for Stauffer, his son-in-law. The complaint was however solely on the charge of abandonment (R., p. 108.) The proceedings had before the Register at Traverse City were regularly transmitted to the Commissioner of the Land Office at Washington, who decided in favor of Johnson and dismissed the contest. An appeal was taken to the Secretary of the Interior, who reversed the decision of the Commissioner and held the homestead entry for cancellation. (R., p. 105.) A petition for a rehearing was refused by Secretary Schurz. (R., p. 102.) Lee, the plaintiff in error, thereupon (the lands having again become liable to entry under the homestead laws) entered the same as a homestead, occupied them for six months and upwards, and then purchased them at $1.25 per acre (See U. S. Rev. Stat. § 2301) and procured a patent for the lands, July 30, 1878, (Defendant's answer, R., p. 12.), and then forcibly drove out Johnson who had continued to claim the lands as before, and had gone on improving them, keeping his son-in-law there, and residing there himself, until April, 1879, as much as his wife's health would permit. (R., p. 42, 43, 31.)

The defendant in error filed his bill on the 22d of May, 1879, (R., p. 14) in the Circuit Court for the County of Emmet, Michigan, in Chancery, praying among other things that Lee be compelled by the decree of the Court to convey the premises in controversy to Johnson and let the latter into possession,—the bill offering to pay Lee what the latter paid the government for the lands, less the costs of this suit. (R., p. 6.) The bill was dismissed by the Emmet Circuit Court, whose decree is printed in the Record, p. 139. Johnson appealed to the Supreme Court of Michigan, which reversed the decree of the lower court, and directed a decree (R., p. 141) to be entered in the court below in favor of Johnson. The ground of that decision was that the Secretary exceeded his jurisdiction, for the reason that his decision was that Johnson's entry was not made in good faith for the purpose of ac-

quiring for himself a homestead under the act, but was made for the purpose of securing, under color of the forms of law, a homestead for his son-in-law, whose homestead privileges had been exhausted; whereas the complaint was that Johnson had abandoned the land for the period of six months. The decision is reported in 47 Mich., 52.

The cause was remitted to the Emmet Circuit Court, in Chancery, and a decree entered in accordance with the decree of the Supreme Court of Michigan. That decree is printed on p. 143 of Record. Lee then sued out a writ of error on the ground (R., p. 146) that a right claimed by him under the U. S. Homestead Act (Rev. Stats. § 2287 et. seq.,) was involved in the cause, and was decided adversely to him by the State Court.

CLAIMS OF DEFENDANT IN ERROR.

I.

FRAUD.—That the record or memorandum of the evidence taken on the contest before the Register at Traverse City, was fraudulently altered and changed by the defendant Lee, or with his knowledge, before the same was forwarded to Washington; and thereby it was made to appear that Johnson had sworn on that contest that he had voted in Kent County in the spring of 1876; and that he intended to give the land to his son-in-law when he got his title.

II.

ERRORS OF LAW.

That the decision of the Secretary of the Interior was erroneous, *as a matter of law:*

(1.) Because upon a complaint before the Register of the law office, that he had *abandoned* his homestead entry; the Secretary cancelled that entry upon a wholly different ground, viz: that he had not entered the land for the purpose in good faith of acquiring a homestead for himself, but for his son-in-law, Stauffer.

(2.) Because upon the proof and testimony taken before the Register and transmitted to the Commissioner of the Land Office, which proofs were the basis, and the only basis of the Secretary's decision, there is no evidence which can sustain a finding or decision that Johnson had abandoned his homestead.

(3.) Because the Secretary of the Interior held and decided that the testimony of Johnson, taken before the Register, and as reported to him by the Register, that Johnson had voted in Kent County after making his entry, and before the complaint was made; and his testimony that "there was no bargain that he (Stauffer, the son-in-law) should have the land. I have intended to give him the land when I get my title," was conclusive upon the question of abandonment.

THE LAW.

I. Although the decision of the officers of the Land Department made within the scope of their authority upon the facts in any contest before them, is conclusive everywhere except when considered by way of appeal within the department; yet, if fraud is practiced upon them, or if they err in the construction of the law applicable to any case, or their decisions are erroneous for any reason, as a matter of law, their rulings may be reviewed and annulled by the courts, when a controversy arises between private persons founded upon their decisions.

Moore vs. Robins, 96 U. S., 530. 534, et. seq.
Shepley vs. Cowan, 91 U. S., 330, 340.
Marquez vs. Frisbie, 101 U. S., 475, 476.
Johnson vs. Towsley, 13 Wall, 72.

And where, as in this case, it appears that the government has parted with the legal title by giving a patent to a person who but for erroneous decision of the officers of the Land Department cancelling complainant's entry would have had no rights; in such case the person taking the legal title with notice will be decreed to convey that title to

the person who could but for that erroneous decision have obtained the patent from the government.

Rector vs. Gibbon, 111 U. S., 276.
Samson vs. Smiley, 13 Wall, 91.
Silver vs. Ladd, 7 Wall, 219.
Garland vs. Wynn, 20 How, 6.

This is true although, in this case, it appears that the person equitably entitled has not resided upon the lands the full time required by the statute. For it appears from the bill and answer (Record, pp. 4, 12) that, after the decision of the Secretary of the Interior, which Johnson complains of as erroneous, Lee, through whose efforts the same had been obtained, entered the land as a homestead, and then, availing himself of the privilege of purchase conferred by Sec. 2301 of the Revised Statutes, obtained a patent from the government, and afterwards dispossessed Johnson. He had, of course, full actual notice of all rights of Johnson; and the latter in his bill (Record, p. 6) offers to refund to Lee the full price, with interest, which the latter has paid to the government. (See Garland vs. Wynn, *supra.*) When Lee bought the lands he availed himself of a privilege accorded only to a homestead, and that privilege should have been accorded only to Johnson who still claimed the lands and held possession; but by reason of the erroneous decision of the Secretary, Lee had become the homesteader, and therefore entitled, in the eye of the Land Department, to the privilege of purchasing the lands. His purchase, therefore, and the title obtained was in trust for Johnson. The case is distinguishable from Bohall vs. Dilla, 114 U. S., 47. See Aikin vs. Ferry, 6 Sawyer, 76.

II. It may be well to call attention to an objection of form that may be raised. The bill is not very artistically drawn, and it proceeds mainly upon the ground of a fraudulent alteration of the Register's notes of Johnson's testimony. The bill, however, sets forth all the

facts and refers to the testimony taken by the Register and to the decisions of the Secretary of the Interior. Upon the face of these the complainant is entitled to relief, as a matter of law, if his claims (aside from the matter of fraud) are founded. There are no facts or proofs outside those material on the exact ground stated for the relief in the bill, which need be referred to show complainant's title to relief. The special prayer of the bill, moreover, correctly asks the particular relief, etc., which complainant is entitled upon any of the claims which he makes . The only objection that could be raised would be that the bill fails to claim relief upon the ground of errors of law committed by the Secretary. But this is a matter appearing from the face of his de-decisions and the testimony taken by the Register, both of which are set up by the bill, and admissible under it.

The point now made that the Secretary erred as a matter of law was taken at the first hearing of the case before the Emmet Circuit Court, and has been taken at every subsequent stage. The counsel of plaintiff in error in their printed brief, submitted to the Michigan Supreme Court say: "It was contended on the argument in the Circuit Court, that even if complainant's testimony was correctly reported, still that the Secretary was mistaken in his construction of the law under the facts, and that this court can give relief. We contend that the decision of the Secretary of the Interior is final and conclusive," citing Moore vs. Robbins, Shepley vs. Cowan, Johnson vs. Towsley, etc.

Under such circumstances an amendment at the hearing in the Emmet Circuit Court, if deemed essensial, could have been made by complainant, under the general practice of the Court.

1 Dan. Ch. Prac., 418.

See also Conally vs. Beck, 3 Cal., 75, 81.

Hiern vs. Mill, 13 Ves., 119, 120.

Read vs. Cramer, 1 Green Ch., (N. J.) 277.

Walker vs. Armstrong, 8 De. G. M. & G., 531.

But this, we think, would be unnecessary, as the prayer for general relief would cover it.

Roche vs. Morgell, 2 Sch. and Lef., 729.

"The rule is," says Lord Eldon, "that if the bill contains charges putting facts in issue that are material, the plaintiff is entitled to the relief which those facts will sustain." (Hiern vs. Mill, *supra*, 1 Dan, Ch. Prac, 380 and n. 5.)

ARGUMENTS UPON THE FACTS AND LAW.

FIRST.—FRAUDULENT ALTERATION OF TESTIMONY.—The Secretary of the Interior was fraudulently imposed upon by the plaintiff in error, by the alteration of the memorandum of the testimony taken before the Register. Robert Stauffer, Henry Bechtel, James Bell and John H. Standish, all of whom were present at the trial before the Register, and Enos Johnson, all swear that upon the two points which the Secretary regarded as controlling, viz., with reference to Johnson's voting in Kent County, and his intention to give the land to his son-in-law, he gave no such evidence as was reported to the Land Department. *R. Stauffer* testifies (R., p. 37) that Johnson did not testify, and used no words conveying the meaning, that he intended to give the land to witness; and that witness had so declared to others when his memory was fresh upon the point. He also testified (R., p. 38) that Johnson did not testify where he had voted. *James Bell* (R., p. 71, 72) testifies to the same effect on both points. On page 74, Mr. Bell says that the question was asked of Johnson whether there was any bargain between Johnson and Stauffer, by which the latter was to have the land, and that Johnson's reply "was in substance, that he got the land "for his own use, and hadn't got it for Mr. Stauffer's benefit." (R., p. 74). He also testifies that the question was asked where Johnson had voted, but that objection was made and no answer made. (R., p. 72). *Bechtel* says upon this latter point, "There was some talking done that I can't remember, but I remember that Mr.

" Moffat (the Register) overruled or ruled it out, that it had nothing to " do with it."

" Q. What, that is whether he voted or not? Ans. Yes, sir.

" Q. Deciding it was immaterial? Ans. Yes.

" Q. From the fact of such decision, did you get the understand- " ing that there was no record made by Moffat on the subject of voting " by Mr. Johnson? Ans. I did." (R., p. 65. See also 62)." *Johnson* himself swears to the same thing (R., p. 99) and swears positively that he had not testified on either of these points as he was reported (R., pp. 84–5). These witnesses are corroborated by *John H. Standish* (R., p. 86) who was formerly the U. S. District Attorney for the Western District of Michigan. Mr. Standish took notes of the testimony; but his memoranda shows no testimony on the two points in question, and his recollection confirms the implication that thus arises that no such testimony was given.

Mr. Moffat, the Register, (R., pp. 113–115) examined on part of plaintiff in error, says that after the trial was over his notes were in the possession of Lee and his brother for two hours; that they were copying the testimony; that the memorandum thereof remained in his office for two or three weeks afterwards when Lee and his brother had access to it; that he, the Register, did not examine it before sending it to Washington, and does not know whether it was altered.

Only three witnesses on behalf of Lee testify on this matter, viz., Lee himself. and A. S. Lee, his brother, the land speculator, who did the altering of the memorandum and might be expected to deny it. The third witness is Job. Scott, who testifies (R., pp. 133, 134) that he was particulary requested by Lee " to remember that old Mr. Johnson sworn that he intended to give these lands to his son-in-law.

We submit that complainant has fairly made out his case upon this point of fraudulent alteration.

SECOND.—The complaint was on the ground of abandonment. Proofs were taken before the Register upon this issue. The *bona fides* of Johhson in making his entry was not involved. No notice of such an issue was given to Johnson. After the proofs were transmitted to Washington, and a decision rendered by the Commissioner in favor of Johnson, the Secretary of the Interior, on appeal to him, reversed the Commissioner's decision and cancelled the entry, not upon the ground of abandonment, but upon the ground that Johnson had not made his entry in good faith for the purpose of acquiring a homestead for himself, but for the purpose of enabling his son-in-law, Stauffer, to secure the land, the latter's privileges having been fully exhausted. Johnson had no opportunity to be heard upon the question of his good faith in making his entry. Notice was given and testimony taken upon a wholly different issue.

The two decisions of the Secretary stating the reasons for cancelling the entries are found, the first on page 105, the record on the application for a rehearing on page 102 of the record.

In the first opinion the Secretary says: "I have considered the "appeal of Lee from your decision dismissing the contest brought by "him *on the charge of abandonment, etc. The element of good faith* is "the essential foundation of all valid claims under the homestead "laws." He then quotes from § 2290 Rev. Stats. the requirement that the *entry* be made for the exclusive use of the party making it, and not directly or indirectly for any third persons. Taking up the evidence, the Secretary states that while it shows that Johnson was on the land personally but a short time, yet it shows, in his wife's illness what may be a sufficient excuse for his absence "*if the evidence shows good* "*faith* IN OTHER RESPECTS." He then says that the evidence showed Stauffer's occupation as Johnson's employee, and that no period of six months had intervened since the entry in which Johnson was not upon the tract; and that there was no bargain that Stauffer should have the land. "But, says that decision, "he (Johnson) testifies as follows: 'I

" have intended to give him the land when I get my title.' He resides " with his family in another county, and in the spring of 1876, one " year subsequent to the date of entry, he voted in said county." Upon this ground only the entry is cancelled not because they show an abandonment—and they certainly do not—but upon the ground of bad faith in making the entry. To state it in the Secretary's own language: "These facts and admissions are, I think, sufficient to justify the con- " clusion that Johnson *cannot be considered a bona fide homestead claim-* " *ant*, acting in good faith, but rather that he is seeking by a seeming " compliance with the forms of law *to obtain a tract of land for his* " *son-in-law*, who has exhausted his homestead privilege."

In his letter of April 23d, 1877, (R. p. 105), the Secretary distinctly states that his decision was based upon these admissions of Mr. Johnson. In his second opinion, he repeats that such is the case ; and bases his refusal to change his decision upon that ground. In this second opinion he re-iterates the grounds of his first opinion, showing very clearly that he was deciding upon the question only, of Johnson's *bona fides* in making the entry.

This decision of the Secretary was entirely without jurisdiction. The Supreme Court of Michigan rendered the decree appealed from upon this ground.

Lee vs. Johnson, 47 Mich., 52.

In that case the Court says "the fifth section of the homestead act " provides that the lands shall revert to the government, if at any time " during the expiration of five years, it shall be proven, after due no- " tice to the settler, that the person shall have actually changed his resi- " dence, or abandoned the land for more than six months at any time. " No complaint was made that Johnson had changed his residence, or " that he intended to give or convey to some one else the benefit of his " entry, even if the latter could then have been inquired into. The " only question in issue under the notice was that of abandonment, and

"this was the only question that could have been or was inquired into "by the Register, or could be considered on appeal by the officers of the "department. And if they disposed of the case finally on other "grounds, their jurisdiction in the premises was not appellate but "original, and this it is not pretended has been conferred. The "Register on the hearing and the Commissioner on appeal, decided "that complainants had not abandoned the land, and upon this ground "there never was a reversal."

The Statute (§ 2297, U. S., Rev. Stat.) provides that the lands shall revert to the government, if it shall be proved, *after due notice to the settler*, that the person has changed his residence or abandoned the land. The settler in this case has never had any notice to appear and prove his good faith in making the entry. The Secretary's decision, cancelling his entry by reason of his want of good faith, in this particular, is therefore entirely without jurisdiction. And Lee, having by means of this decision acquired the legal title with notice of Johnson's rights, holds the title in trust for Johnson, and is entitled to a decree for conveyance, as prayed.

The Secretary of the Interior has decided in *Shull vs. McCormick* (November 16, 1882) that evidence in contests under the land laws must be confined to the allegations, and judgment rendered only on the issues raised by the record. (Existing Land Laws, 1880, Digest of Decisions, p. 58.)

THIRD.—The testimony taken before the Register as it was reported to the Secretary of the Interior (R., pp. 108-113) is insufficient to justify a decision, or sustain a finding that Johnson had abandoned his entry for more than six months. The finding being without support in evidence is therefore erroneous.

Job. Scott, on behalf of the complainant testified: "I do not know of J.'s family being on the land. I should not think Mr. J. had been on the land more than three months from the time he entered

until the complaint. I don't remember seeing Mr. J. on the place until October; he stayed a month or six weeks. I don't know whether he was there from October 5th to December, 1875, or not. I did not see Mr. J. until this spring again (on the land.) Mr. Robert Stauffer is living on the place; at work on the place. I don't know who he was at work for. He has worked the place ever since. I think there is ten acres improved; board fence on west and part of north side; frame house built; log stable, etc.

Isaac Stauffer, on behalf of complainant testified, that he lived in Gaines, near Mr. Johnson. I know Mr. Johnson lived there until I left the last of April, 1876. I have no knowledge of his moving his effects, etc., out of Gaines. Mr. J. has been absent himself sometimes. I know he was was away in October; don't know how long; think he was in the Little Traverse region, October 5th to December 24th, 1875.

A. S. Lee, complainant's brother testified, that J. applied to him to purchase additional soldier entries to apply on his homestead. This is the substance of all the testimony given on the part of Lee before the the Register. Johnson's testimony and that of Robert Stauffer his son-in-law show: that Johnson "entered" the land April 17, 1875, having previously built a shanty on it; that he sent his son-in-law there about May 1, 1875; that the latter worked for him, and was to be paid 'what his labor was worth;' that Johnson was personally on the land, October 5th to about Christmas, 1875, two weeks in March, 1876, and from June 15, 1876, until the complaint was made June 21, and was still there at the time of the hearing and had never been off the place six months at a time; that his wife came with him and stayed June 15th to the hearing; that her ill health had prevented her coming before; that improvements were made by Stauffer, under Johnson's direction, etc., etc. The other two witnesses, Bechtel and Bell, sworn on behalf of respondent corroborated the testimony of Johnson and R. Stauffer in several particulars. Johnson also testified as follow:

"There was no bargain that he (R. Stauffer) should have the land. I "have intended to give him the land when I get the land. I voted last "spring in Gaines, Kent County, Michigan; there was no question as "to my voting; I did not think anything about it." It also appeared that Johnson had a farm in Kent County, several children and a sick wife.

What proof does this testimony show of the only matter in issue before the Register, viz.: abandonment of this homestead for six months? We submit there is not a particle. It was not necessary in order to conform to the statute that he should himself make the improvements, clear the lands, etc. (Silver vs. Ladd, 7 Wall, 225.) The Secretary himself admits that it was not necessary for Johnson to bring his family there, and he shows a good reason for not doing it.

See Bohall vs. Dilla, 114 U. S., 5.

His voting in Kent County proves nothing. In March he is on the land, and moves up there in June of the same year—just before and just after the voting. His intention to give his son-in-law the land, certainly does not prove his intention to abandon the land. None of these things have any materiality on the question of abandonment: they are relevant only on the question of intent in making the entry. And that was not in issue before the Register and he was not given notice to produce proofs on that point, and under the statute no provision is made for a contest upon such a ground. The evidence wholly fails to support the finding that Johnson had abandoned his entry; and it cannot be sustained by facts tending to show good faith in making the entry--a matter not in issue, and which the Secretary had no jurisdiction to try in this manner. And moreover, we submit, that the good faith of the entry is clearly shown on the whole of the evidence.

FOURTH.—In both his decisions, the Secretary of the Interior gave *conclusive* effect to Johnson's admissions that he voted in Kent County

and that he intended to give his son-in-law the land when he got the land. This was error.

We think his decisions both show that he gave this conclusive effect to these admissions, as establishing that the entry was not made in good faith. If so, it was error, for the reasons already pointed out. If, however, he regarded this testimony as establishing the point in issue, viz.: abandonment, it was error for the reason that these admissions were not only not conclusive upon that question, but had no tendency, even, to prove that Johnson had "abandoned the land for more than six months at a time."

We concede that his decision cannot be reviewed "for mere errors of judgment upon the weight of evidence in a contested case" before him.

Shepley vs. Cowan, 91 U. S. 340.

But this was not an error of judgment upon the weight of the evidence. The error consisted in giving it *conclusive* effect upon the issue. That was an error of law.

And, moreover, it was error for the further reason that the admission was entirely immaterial upon the question of abandonment. So far as they were material at all, they were material only upon the question of Johnson's interest and good faith in making the entry under the homestead act.

The testimony showed, and the Secretary's opinion concedes that the following facts were proved:—Johnson's entry; his employment of his son-in-law; the latters occupation and making of improvements; Johnson's presence on the land at various times, no period of 6 months intervening; and his wife's poor health as an excuse for his absence. In spite of these established facts, the Secretary decided that because Johnson voted in Kent Co., and intended to give the lands, when he got title, to his son-in-law, (there being no bargain to this effect), he had abandoned his

entry. It is not pretended that there is any other evidence tending to show abandonment. This was giving conclusive effect to these admissions. If the other facts were proved, as the Secretary admits, it was proved that Johnson had not abandoned the land. But because of Johnson's admissions the Secretary held that he had abandoned it. This is erroneous as a matter of law. It is in effect deciding that the voting in another county, and having the intention to give the lands to his son-in-law, constituted an abandonment, which is clearly wrong. The court will notice that there was no contract or bargain between Johnson and Stauffer that the latter should have the land, and there was no evidence, even, that the intention of Johnson to give the lands to Stauffer was ever communicated or known to the latter. It was a naked intention, uncommunicated and entirely within his own bosom; and Stauffer could not only not enforce it, but he would have no just ground of complaint if Johnson should change his intention (as he had a right to do at any moment), any more than an intended beneficiary can complain of the testator's change of uncommunicated intention as to his will. All the testimony on the point which was taken before the Register was Johnson's. "There was no bargain that he should have the land I have intended to give him the land when I get the land"; and Stauffer's, "I had no conversation with Mr. Scott to the effect that I was to have the place after Mr. J.'s five years were up." (R., pp. 111, 112.) Stauffer swears in this case, (R., p. 33) that he was working for Johnson while on the lands, that he had no interest in any portion of them, and that there never was any arrangement between them by which it was agreed or understood that the lands were to be Stauffer's after the patent was acquired. "There never was a word," as the witness says. (See also Johnson's testimony, R., p. 96.)

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